Staff Summary Report

To: Mayor and City Council
Through: City Manager

Agenda Item Number 47
Meeting Date: 3/22/01

SUBJECT: **CENTERPOINT / MCW TRANSFER DOCUMENTS**

PREPARED BY: Dave Fackler. Development Services Manager (480-350-8530)

REVIEWED BY: C. Brad Woodford, City Attorney (480-350-8227)

BRIEF: Approval of documents associated with the transfer of ownership of certain properties (Lot 7A together with a small portion of Lot 6) within the Centerpoint development project from Centerpoint Plaza Limited Partnership (DMB) to Brownstone 6th & Maple, L.L.C. (MCW).

COMMENTS: **PLANNED DEVELOPMENT (0406)** Request approval of documents associated with the transfer of ownership of certain properties (Lot 7A together with a small portion of Lot 6) within the Centerpoint development project from Centerpoint Plaza Limited Partnership (DMB) to Brownstone 6th & Maple, L.L.C. (MCW)

Document Name: 20010322devsrh16 Supporting Documents: No

SUMMARY: DMB is in the process of selling the remaining undeveloped land within the Centerpoint project to MCW, which requires that the City review and approve certain documents related to the ownership transfer. MCW will develop the remainder of the property with residential and commercial uses in accordance with approved plans.

HISTORY AND FACTS:

Attached for the City Council's review and approval are five documents, that require the City's approval, related to the title transfer of Lot 7A together with a small portion of Lot 6 (the undeveloped parking area at the southwest corner of 5th and Maple) of the Centerpoint project from DMB to MCW for development of a mixed-use development. The documents require the approval of all entities having an interest in the Centerpoint development. The attached documents include:

Attachment 1: **Amended and Restated Centerpoint Declaration of Covenants, Conditions, Restrictions and Easements.** This document will be approved by Centerpoint Plaza Limited Partnership ("CPLP"), City of Tempe, CPT Development Partners Limited Partnership ("CPT"), Chase Bankcard Services, Inc. ("Chase"), and HPTMI II Properties Trust ("Courtyard") as owners under the Declaration.

Attachment 2: **Parking Easement and Cost Sharing Agreement.** This document provides for the operation, maintenance and cost sharing of parking to be replaced and developed on Lot 7A by MCW. This document will be approved by CPLP, Brownstone 6th & Maple, L.L.C. ("Brownstone") and the City of Tempe.

Attachment 3: **Certificate of Termination.** This document certifies the Centerpoint Finalization and Completion Agreement entered into by CPLP and the City, which finalized the 1985 Redevelopment and Disposition Agreement between the parties. CPLP and the City will approve this document.

Attachment 4: **Third Amendment to Declaration of Restrictions.** This document excepts the small portion of Lot 6, that is involved in the land transfer, from the original Declaration of Restrictions for the Centerpoint development entered into by the City, CPLP and Chase in 1991. CPLP, CPT, Chase and the City will approve this document.

Attachment 5: **Ratification and Correction of Final Plat for Centerpoint Plaza.** This document ratifies a correction in the Final Plat for Centerpoint by amending the lot line between the Courtyard parcel Lot 7B and Lot 7A. The document also corrects a signature block on the plat itself. CPLP, Courtyard and the City will approve this document.

FISCAL NOTE:

No fiscal impact from this action.

RECOMMENDATION:

Approve the five attached documents and authorize the Mayor and the Development Services Manager to execute the documents substantially as presented.

ATTACHMENT #1

WHEN RECORDED, MAIL TO:

DMB Associates
Gainey Ranch Town Center II
7600 E. Doubletree Ranch Road
Suite 300
Scottsdale, AZ 85258-2137
Attention: General Counsel

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CENTERPOINT PLAZA

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CENTERPOINT PLAZA

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "**Declaration**") is made and entered into as of _____, 2001 by **CENTERPOINT PLAZA LIMITED PARTNERSHIP,** an Arizona limited partnership ("**CPLP**"), the **CITY OF TEMPE, ARIZONA,** a municipal corporation (the "**City**"), **CPT DEVELOPMENT PARTNERS LIMITED PARTNERSHIP**, an Arizona limited partnership ("**CPT**"), **CHASE BANKCARD SERVICES, INC.**, a Delaware corporation ("**Chase**"), and **HPTMI II PROPERTIES TRUST**, a Maryland real estate investment trust ("**Courtyard**"). CPLP, City, CPT, Chase, and Courtyard shall sometimes hereinafter be collectively referred to as the "**Owners**".

R E C I T A L S:

A. CPLP and the City executed and recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza dated May 4, 1988 and recorded May 5, 1998 as Document No. 88-218242 of the records of the Maricopa County, Arizona Recorder as amended by the Supplement dated May 4, 1988, recorded May 5, 1988 and re-recorded December 14, 1988 as Document No. 88-607391; the Second Supplement and Amendment dated July 11, 1991 and recorded July 25, 1991 as Document No. 91-345268; and the Third Supplement and Amendment dated May 3, 1996 and recorded May 7, 1996 as Document No. 96-0316147 (collectively the "**Original Declaration**") with respect to that certain real property described on the attached Exhibit A which is incorporated herein by this reference (collectively "**Centerpoint Plaza**").

B. The Owners collectively own fee title to all of Centerpoint Plaza, or have a leasehold interest in a portion thereof.

C. The Owners desire to provide for certain easements for use of Common Areas within Centerpoint Plaza and to provide for the Association to maintain the Common Areas, all as is set forth more fully below.

D. The Owners intend that the Owners shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded for the purpose of enhancing and protecting the value, desirability, and attractiveness of Centerpoint Plaza.

E. The Owners, in compliance with the requirements of Article 5 of the Original Declaration, intend that this Declaration amend, restate and supersede in its entirety the Original Declaration.

NOW, THEREFORE, the Owners, together with the consents of the other parties attached hereto and made a part hereof, hereby declare, covenant and agree as follows.

ARTICLE 1

DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of such term capitalized.

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.2 "Assessment" shall mean that portion of the Common Area Maintenance Costs, which is to be paid by each Owner as determined by the Association as provided herein.

1.3 "Association" shall mean and refer to the C.P. Owners Association, an Arizona nonprofit corporation.

1.4 "Benefitted Parcel" means the dominant parcel for whose benefit, and appurtenant to which, a particular easement in, on, over, upon or through a Burdened Parcel is granted or exists.

1.5 "Burdened Parcel" means the servient parcel in, on, over, upon or through which an easement in favor of a Benefitted Parcel is granted or exists.

1.6 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.7 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.8 "Centerpoint Plaza" shall have the meaning set forth in Recital A above, referring to the property described on Exhibit A. Centerpoint Plaza is composed of the CPLP Parcel, the CPT Parcel, the Chase Parcel, the Courtyard Parcel, the Irby Parcel, and the Mixed Use Parcel. Pursuant to Section 5.4, Centerpoint Plaza does not include the Fire Station Parcel.

1.9 "Chase Operations Building" means a four-story building shown as Building G on the June 1991 preliminary PAD and Phase Two exhibit.

1.10 "Chase Parcel" means that part of Centerpoint Plaza described on Exhibit A-2. The Chase Parcel is owned by the City subject to a lease in favor or Chase.

1.11 "Common Area Maintenance Costs" means and includes the actual and estimated expenses for maintaining, improving, repairing, operating and managing the Common Areas and operating the Association and shall include all sums designated by the Constituent Documents as Common Area Maintenance Costs.

1.12 "Common Areas" means only: (i) those sidewalks, plaza areas, bike paths and walkways at any time located within Centerpoint Plaza, but excluding those internal to a Parcel and for which restricted access is created and maintained by the Parcel Owner; (ii) all common amenities at any time located within, and for the general benefit of, Centerpoint Plaza such as fountains, pools, signs and other similar improvements; (iii) all perimeter sidewalks and landscaping at any time located within Centerpoint Plaza which is adjacent to any of Ash Avenue, University Drive, Mill Avenue, 5th Street and any Private Roads; and (iv) all portions of any Private Roads at any time located within Centerpoint Plaza. The location of the Common Areas which exist as of the date this Declaration was Recorded is generally depicted on Exhibit B attached hereto. The Common Areas specifically excludes all Driveways and parking areas located on any Parcel. Notwithstanding the foregoing, the Association shall maintain and repair the sidewalks and any Private Roads which are at any time located within Centerpoint Plaza only to the extent the City does not do so or only to the extent the City does not do so to the standard or level of maintenance required by the this Declaration.

1.13 "Condominium" shall have the meaning assigned to such term in the Condominium Act.

1.14 "Condominium Act" means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

1.15 "Condominium Association" means the association established under a Condominium Declaration.

1.16 "Condominium Declaration" means any instruments, however denominated, that create a Condominium and any amendments to those instruments.

1.17 "Condominium Unit" means the portion of a Condominium designated for separate ownership or occupancy and identified as a unit on a condominium plat complying with the Condominium Act recorded in the official records of Maricopa County, Arizona.

1.18 "Constituent Documents" shall mean and include this Declaration as it may be amended from time to time, the exhibits attached hereto, and the Articles and Bylaws of the Association. The Constituent Documents shall not contain any provisions that are inconsistent with the provisions of this Declaration and shall provide that the provisions thereof cannot be amended or modified except as allowed under Article 5 for amendments to this Declaration.

1.19 "Courtyard Parcel" means that part of Centerpoint Plaza described on Exhibit A-3.

1.20 "CPLP" means Centerpoint Plaza Limited Partnership, an Arizona limited partnership and its successors and assigns as provided in Section 7.7 below.

1.21 "CPLP Parcel" means that part of Centerpoint Plaza described on Exhibit A-1.

1.22 "CPT Parcel" means that part of Centerpoint Plaza described on Exhibit A-4.

1.23 "Declaration" means this instrument, as it may be amended from time to time.

1.24 "Development Plan" means, with respect to Centerpoint Plaza or any portion thereof, the Phase 1 Final PAD, Phase 2 Final PAD, Phase 3 Final PAD, Phase 4 Final PAD, Phase 5 Final PAD, and the 6th Amended PAD and Phase 6 Final PAD, or any subsequent PAD plan or site plan for Centerpoint Plaza or any portion thereof, approved and adopted by the City. In the event of a conflict between different Development Plans, the most recent Development Plan shall control.

1.25 "Driveways" means any driveway located in Centerpoint Plaza.

1.26 "Fire Station Parcel" means the land described on Exhibit A-7.

1.27 "Improvements" means all (or less than all, if so limited) existing and future buildings and structures, sidewalks, hardscape, waterscape and landscaping erected, built, placed or installed upon, through or under Centerpoint Plaza.

1.28 "Irby Parcel" means that part of Centerpoint Plaza described on Exhibit A-5.

1.29 "Lender" means the holder of any mortgage, deed of trust or other financing encumbrance given in good faith and for value (herein sometimes called a "**Mortgage**") and which constitutes a lien on all or any part of Centerpoint Plaza, but excluding holders of mortgages, deeds of trust, security interests or other financing encumbrances on any leasehold interest (other than a ground lease).

1.30 "Mixed-Use Parcel" means that part of Centerpoint Plaza described on Exhibit A-6.

1.31 "Office Portion" shall mean that portion of the Chase Operations Building utilized for office space; provided, however, that the Owner of the Chase Operations Building is not obligated to use any portion of the building for such purposes.

1.32 "Operations Portion" shall mean that portion of the Chase Operations Building utilized as an operations center; provided, however, that the Owner of the Chase Operations Building is not obligated to use any portion of the building for such purposes.

1.33 "Owner" means the record owner, whether one or more persons, of fee simple title to any Parcel, but excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded agreement of sale or contract for the sale of real property wherein legal title remains in the vendor but possession passes to the vendee shall be deemed to be an Owner and the vendor shall be deemed to be a Lender. If title to a Parcel is vested of record in a trustee under a deed of trust pursuant to Arizona Revised Statutes Section 33-801, et seq., the trustor thereunder, and not the trustee, shall be deemed to be the Owner of the Parcel. To the extent that any Parcel, or any portion thereof, is subjected to a Condominium Declaration pursuant to the provisions of the Arizona Condominium Act, the provisions of the Condominium Declaration may reflect that the "Owner" of the Parcel, or portion thereof, that is subjected to the Condominium Declaration, be a Condominium Association having jurisdiction over the Unit Owners under that Condominium Declaration. If any portion of a Parcel is subjected to more than one Condominium Declaration, then only one Condominium Association

may be recognized as the "Owner" of that portion of the Parcel and the applicable Condominium Association that will be recognized as the "Owner" of that portion of the Parcel must be specifically described in a Condominium Declaration and written consent to recognize such Condominium Association as the "Owner" of that portion of the Parcel must be provided to the Association by all other Condominium Associations having any jurisdiction over that portion of the Parcel. In no event shall a Unit Owner be an Owner if the Condominium Association in which such Unit Owner is a member is recognized as the Owner as described above. In any event, no individual Unit Owner of a residential Unit shall be considered an "Owner" under this Declaration, and instead, the applicable Condominium Association for such residential Units shall be deemed the "Owner" on behalf of such Unit Owners. In no event may the Mixed Use Parcel have more than five (5) Owners.

Notwithstanding the foregoing, if any Parcel is subject to a lease with an original term in excess of seventy (70) years, or any lease is entered into to achieve property tax abatement, the owner of fee title may designate in a Recorded instrument that the lessee under such lease be the "Owner" rather than the holder of the fee title. Notwithstanding anything to the contrary contained herein, for so long as Chase has a leasehold interest in the Chase Parcel, then for the purposes of this Declaration, the Owner of the Chase Parcel shall be Chase and the City shall not be considered an Owner of the Chase Parcel hereunder and shall not be subject to any Assessment with respect to the Chase Parcel, and except as otherwise provided herein, the City shall have no rights or obligations under this Declaration with respect to the Chase Parcel. Notwithstanding anything to the contrary contained herein, for so long as CPLP has a leasehold interest in the CPLP Parcel, then for the purposes of this Declaration, the Owner of the CPLP Parcel shall be CPLP and the City shall not be considered an Owner of the CPLP Parcel hereunder and shall not be subject to any Assessment with respect to the CPLP Parcel, and except as otherwise provided herein, the City shall have no rights or obligations under this Declaration with respect to the CPLP Parcel. Notwithstanding anything to the contrary contained herein, for so long as CPT has a leasehold interest in the CPT Parcel, then for the purposes of this Declaration, the Owner of the CPT Parcel shall be CPT and the City shall not be considered an Owner of the CPT Parcel hereunder and shall not be subject to any Assessment with respect to the CPT Parcel, and except as otherwise provided herein, the City shall have no rights or obligations under this Declaration with respect to the CPT Parcel. Notwithstanding anything to the contrary contained herein, for so long as City holds fee title to the Irby Parcel regardless of any third party leasehold interest therein, the City shall be the Owner of the Irby Parcel.

1.34 "Parcel" means a parcel of real property within Centerpoint Plaza created as a separate legal parcel through the recording of a deed or a plat (including a condominium map or plat).

1.35 "Permittees" shall mean the Owners and their respective heirs, successors, assigns, grantees, mortgagees, tenants and subtenants, and all concessionaires, agents, employees, contractors, customers, visitors, licensees and invitees of any of them.

1.36 "Person" means a natural person, corporation, partnership, association, trust, government, governmental subdivision or agency, or other legal or commercial entity.

1.37 "Private Roads" means those portions of 6th Street, 7th Street and Maple Avenue (exclusive of all Street Parking Areas as defined in Section 3.1 below) located within Centerpoint Plaza now or hereafter existing.

1.38 "Record" or "Recorded" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Maricopa County, Arizona.

1.39 "Unit Owner" shall mean the record owner, whether one or more Persons, of beneficial or equitable title to the fee simple interest of a Condominium Unit.

ARTICLE 2

EASEMENTS

2.1 Declaration of Easements. The Owners do hereby establish, create, give, grant and convey over, upon and under Centerpoint Plaza, to the extent of their respective title to portions thereof, the following easements, rights and privileges for those purposes set forth below. The easements so established shall be appurtenant to and for the benefit of the Parcel(s) specifically designated, or if the Benefitted Parcel is not so designated, then appurtenant to and for the benefit of all Parcels, together with the Owners of each such Parcel, and their respective Permittees.

2.2 Vehicular Ingress and Egress Easement. A nonexclusive vehicular access easement is hereby created for the benefit of all Parcels on and over all Private Roads. Once any Private Road provides access to and from any of 5th Street, Mill Avenue, or Ash Avenue, the Owner of all or any portion of that Private Road may not close or modify the Private Road to the extent doing so will eliminate or materially diminish vehicular access over the Private Road to and from such road(s) without the prior written consent of all Owners of all other portions of the Private Roads. Nothing in the foregoing shall preclude modification or relocation of any portion of a Private Road so long as then existing access to and from any of 5th Street, Mill Avenue, or Ash Avenue is not eliminated or materially diminished. Notwithstanding the foregoing, the Owner of any portion of a Private Road may, with the prior consent of all other Owner(s) of any portion of that Private Road, temporarily interrupt, restrict or prevent use of and close the Private Road to pedestrian and vehicular access in connection with public and/or private events held in and around Centerpoint Plaza. Such interruption, restriction or closure may only extend for a period of up to five (5) consecutive days, and shall in no event occur more than ten (10) times in any twelve (12) month period. Each Owner shall use commercially reasonable efforts to in any event minimize the interruption, restriction or closure to only that extent reasonably needed in connection with the applicable public and/or private events, and each Owner shall use reasonable efforts to provide advance notice to all other Owners prior to any interruption of the use and enjoyment of the applicable Private Road.

2.3 Pedestrian Easement. A nonexclusive easement is hereby created on and over all portions of the Common Areas that contains sidewalks, plaza areas, bike paths and walkways at any time located within Centerpoint Plaza for pedestrian ingress and egress for the benefit of all Owners and Permittees. It is expressly understood that the foregoing easement does not affect or include any portion of Centerpoint Plaza that is not Common Areas, including, with limitation, all

Driveways and areas internal to a Parcel and for which restricted access is created and maintained by the Parcel Owner. All such sidewalks, plaza areas, bike paths and walkways may be relocated and/or eliminated or closed by the Owner of the Parcel on which such item is located, from time to time and at any time, so long as such action is not inconsistent with the then current Development Plan for that Parcel.

2.4 Surface Drainage Easement. A nonexclusive easement is hereby created over and across each Parcel to permit the drainage of water to the streets or drainage system adjacent to or within Centerpoint Plaza in accordance with grading and drainage plans approved by the City. No improvements, grading or other alteration of the surface of any Parcel shall be undertaken which would have the effect of impeding the proper surface drainage in accordance with the approved drainage plan to the detriment of any Parcel.

2.5 Landscaping and Maintenance Easement. A nonexclusive easement in gross is hereby created on and over the Common Areas of Centerpoint Plaza for the benefit of the Association in the discharge of its obligation to maintain and replace landscaping and to maintain and repair any and all portions of Centerpoint Plaza as may be required hereunder or any Development Plan.

2.6 Scope of Easements; No Dedication to Public. The easements granted herein are appurtenant to the Benefitted Parcel and a burden on the Burdened Parcel. The easements granted herein shall run with the land and shall inure to the benefit of, and be binding upon, the Owner(s) of any Benefitted or Burdened Parcel, and their successors and assigns. All of the easements granted herein shall automatically terminate upon termination of this Declaration in accordance with Section 5.1. This Declaration is not intended to and does not constitute a dedication for members of the public to use any of the Common Areas or any portion of a Burdened Parcel, nor shall anything contained herein create or impose any duty on the Association, or any Owner, to any member of the public.

ARTICLE 3

MAINTENANCE OBLIGATIONS; ASSESSMENTS; VOTING RIGHTS

3.1 Maintenance of Common Areas . To the extent not the responsibility of the City, the Association shall be responsible for the maintenance, management, restoration, repair and replacement of all Common Areas and all Improvements located thereon. To the extent the Association is maintaining the Private Roads, the Association shall also maintain and repair the portions of 6th Street, 7th Street and Maple Avenue located within Centerpoint Plaza now or hereafter used from time to time for on-street parking (the "**Street Parking Areas**"). Nothing contained in this Declaration, nor any course of conduct by the Association or any Owner, shall be deemed to be an assumption by the Association, or any Owner, of any duty or obligation to members of the public to maintain, restore, repair or replace any Common Areas for which the City is otherwise responsible to maintain, restore, repair or replace. Subject to the provisions of Section 3.2.3 below, the Association shall use a reasonably high standard of care in providing for the required repair, replacement, management and maintenance of the above described areas such that Centerpoint Plaza is maintained in first-class condition and repair. In this connection, the Association may, in its discretion: (a) enter into contracts with independent contractors to

maintain all, or portions, of the Common Areas; (b) replace any injured or diseased trees and other vegetation within any area in which the Association is required by this Declaration to maintain landscaping; and (c) do all such other and further acts which the Association deems necessary to preserve and protect the Common Areas and any other areas to be maintained by the Association in accordance with the general purposes specified in this Declaration. The Association shall assess the Owners for their proportionate share of the costs of such service, as provided in Section 3.3. Notwithstanding the foregoing, to the extent the Common Area on a Parcel is affected by any construction, reconstruction, or substantial renovation on such Parcel, the Association's obligations under this Section shall be suspended until the completion of such activities.

3.2 Assessments. All costs incurred by the Association in connection with the maintenance, management, restoration, repair and replacement of the Common Areas, for Common Area trash removal and for all other obligations of the Association hereunder are referred to herein as "**Common Area Maintenance Costs**". Common Area Maintenance Costs include the following to the extent the same are applicable to the Association's obligations hereunder: wages, salaries and employee benefits of persons performing services; utilities; street, sidewalk and other Common Areas, sweeping, sealing, patching, restriping, repair, maintenance and replacements; public liability and property damage insurance; supplies, materials, tools, parts and equipment; equipment rental charges, bookkeeping, accounting, legal and other professional charges and expenses incurred in connection herewith; fees for permits and licenses; administrative expenses; security costs; taxes and assessments; service and maintenance contracts; signage repairs, maintenance and utilities; and landscaping. The Common Area Maintenance Costs shall also include the cost of any insurance premiums for worker's compensation, errors and omissions and directors, officers and agent's liability, and any cost of bonding the members of the Board of Directors. The Common Area Maintenance Costs shall also include such funds as may be necessary to provide for general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board.

3.2.1 At the option of the Board, the Association shall maintain casualty insurance for the Common Areas or, as to all or a portion of the Common Areas, the Board may instruct the Owner of any Parcel underlying any Common Areas to include such casualty insurance for the benefit of the Association as a part of the insurance maintained by such Owner. In the latter event the Association shall reimburse the Owner for the portion of the insurance maintained by such Owner that is reasonably allocated to the Common Areas. The cost of such reimbursement shall be a part of the Common Area Maintenance Costs.

3.2.2 With respect to taxes, each Owner shall pay any real property taxes assessed against any Common Areas located in the Parcel owned by such Owner and the same shall not constitute Common Area Maintenance Costs. Any taxes on any property owned by the Association shall constitute Common Area Maintenance Costs.

3.2.3 The Board may impose such conditions as may be determined to be reasonably necessary (including, without limitation, the requirement that certain Improvements be constructed pursuant to contracts providing for a one year warranty for Improvements or that any landscaping be installed and maintained by the Owner for a sufficient grow-in period and/or be installed with a 75-day warranty, and that any such warranties shall be non-exclusively

assigned to the Association) prior to accepting any maintenance responsibility for Improvements constructed on Common Areas.

3.2.4 The Common Area Maintenance Costs shall be allocated to and assessed against each Owner based upon a fraction with the denominator of each fraction to consist of the total of (i) one fourth of the Rentable Square Feet of building space (defined below) contained in the Operations Portion of the Chase Operations Building, (ii) one half of the Rentable Square Feet of building space contained in each of the Chase Office Building and the Office Portion of the Chase Operations Building, (iii) one half of the Rentable Square Feet contained in each other building or portion of a building in Centerpoint Plaza utilized for office purposes, (iv) one half of the gross construction area of any building on the Courtyard Property used for hotel purposes, (v) one eighth of the Saleable Area of any Improvements used or intended to be used for residential purposes on the Mixed Use Parcel, and (vi) the total Rentable Square Feet contained in each other building or portion of a building in Centerpoint Plaza (other than those described in (i) through (v) above, and other than parking structures and garages and any Common Areas buildings which shall not be included).

3.2.5 Given the denominator calculated as provided above, the fractional share of Common Area Maintenance Costs allocated to each Owner shall be determined by the following numerators:

(a) To the Owner of the Operations Portion of the Chase Operations Building the numerator shall equal one fourth of the Rentable Square Feet in such portion of such building;

(b) To the Owner of each of the Office Portions of the Chase Operations Building and of the Chase Office Building the numerator shall equal one half of the Rentable Square Feet in each such building or building portion;

(c) To each Owner of each other building or portion of a building in the Centerpoint Plaza utilized for office purposes, the numerator shall equal one half the Rentable Square Feet in such building or building portion;

(d) To the Owner of any building operated on the Courtyard Parcel for hotel purposes the numerator shall equal one half of the gross construction area of the building;

(e) To the Owner of any residential Improvements, the numerator shall equal one eighth of the Saleable Area thereof;

(f) To each Owner of each remaining building or portion of a building in the Centerpoint Plaza (other than those designated in (a) through (e) above and other than parking garages or structures and any Common Areas buildings) the numerator for each such building or portion of a building shall equal the Rentable Square Feet in each such building or building portion.

3.2.6 The Owner of any Parcel may, at its option, allocate its total share of Common Area Maintenance Costs between portions of such Parcel or the tenants of the same in any manner which may be selected by such Owner in lieu of the allocation method set forth above; however, such Owner shall remain liable for its entire share of Common Area Maintenance Costs and no such allocation shall affect such Owner's obligations hereunder.

3.2.7 If the Owner of any Parcel changes the use of any Improvements on its Parcel, the numerator and the denominator of any fraction used to determine votes and allocation of Common Area Maintenance Costs shall be adjusted accordingly effective as of the date that is the later of the date that use of such Improvements has in fact changed and the date the Association receives written notice from such Owner of the exact change of use.

3.2.8 No assessments of Common Area Maintenance Costs shall be allocated to the Owner of any building and the Rentable Square Feet or Saleable Area of any building shall not be included in the numerator or the denominator of any fraction until construction of such building has been substantially completed. For purposes hereof, a building shall be deemed substantially completed when the Improvements constructed thereon have been completed and approved for occupancy by the City of Tempe.

3.2.9 An equitable portion of the Common Area Maintenance Costs attributable to the maintenance or repair of any Street Parking Area shall not be allocated and assessed to all Owners, but instead, shall only be allocated and assessed to the Owners who own the Street Parking Areas for which the costs were incurred. To the extent costs were incurred with respect to Street Parking Areas owned by more than one Owner, the costs relating thereto shall be allocated between the applicable Owners in proportion to each respective Owner's share of the total number of parking spaces located within the applicable Street Parking Area for which the costs were incurred.

3.2.10 If any Improvements once completed and assessed are thereafter damaged, destroyed, demolished, remodeled or otherwise modified (hereinafter referred to as a "**Modification**") to eliminate or make unusable any Rentable Square Feet or Saleable Area (hereinafter "**Unusable Improvements**"), then, notwithstanding anything to the contrary contained in this Declaration, for purposes of determining the allocation of Common Area Maintenance Costs and voting rights attributable to the Owner of the Parcel upon which such Unusable Improvements were originally located or used, the amount of Rentable Square Feet or Saleable Area determined for such Parcel based on the use to which such Improvements were being utilized prior to any such Modification shall nonetheless continue to be included in both the numerator and the denominator of any fraction determined in accordance with the foregoing. Once and to the extent that the remodeling or rebuilding of any Unusable Improvements is substantially completed and approved for occupancy by the City of Tempe, the amount of Rentable Square Feet or Saleable Area in such Improvements, and the purpose for which such Improvements will be utilized, shall be determined in accordance with the provisions of Sections 3.2.4 and 3.2.5 above. Based upon such determination, the newly determined amount of Rentable Square Feet or Saleable Area shall thereafter be utilized in both the numerator and the denominator of any fraction determined for purposes of determining the allocation of the Common Area Maintenance Costs and voting rights attributable to the Owner of the Parcel as required by this Declaration. It is expressly understood, however, that to the extent that any

Unusable Improvements on a Parcel are not remodeled or rebuilt to be usable, then the total Rentable Square Feet or Saleable Area Improvements of such Parcel utilized in the numerator and the denominator of any fraction determined for purposes of determining the allocation of the Common Area Maintenance Costs and voting rights attributable to the Owner of the Parcel shall be equal to: (a) the actual total Rentable Square Feet or Saleable Area of the Improvements then being utilized on such Parcel based on the use to which such Improvements are being utilized; or (b) the total Rentable Square Feet or Saleable Area of all Unusable Improvements prior to any damage, destruction, demolition, remodeling or other modification, based on the use to which such Unusable Improvements were being utilized, prior to any such damage, destruction, demolition, remodeling or other modification, whichever is greater.

3.2.11 The "**Rentable Square Feet**" or "**Rentable Square Foot**" of building space used herein shall be established, to the extent applicable, in accordance with the standards established by the American National Standards Institute, Inc. (or subsequent revisions thereof) commonly known as the BOMA Standard.

3.2.12 The term "**Saleable Area**" shall mean the gross square footage of Improvements intended to be occupied as separate dwelling units, expressly excluding common hallways, lobbies, and other areas available generally to residents of such dwelling units.

3.2.13 The consent of Owners holding at least seventy-five (75%) of the votes in the Association (with the votes calculated as provided above) shall be required for any Association funds to be utilized for any capital improvements on any Common Areas costing in excess of $50,000.00 (other than capital improvements for which insurance proceeds available to the Association are sufficient to pay the cost of such improvements) or for any Common Area Maintenance Costs being utilized for such capital improvements. No vote shall be required in the case of Common Areas capital improvements constructed at the cost and expense of any Owner.

3.2.14 Except as provided in Section 3.2.15 below, the Assessment together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge, continuing servitude and lien (the "**Assessment Lien**") upon the Parcel, or portion thereof, against which each such Assessment is made, which lien shall be for the benefit of, and enforceable by, the Association. Any Assessment or installment thereof not paid within thirty (30) days when due shall be deemed delinquent and shall bear interest at a rate of twelve percent (12%) per annum, and, in addition, a late fee, the amount of which shall be determined by the Board and which shall not exceed the maximum permitted under Arizona law, may be assessed for each late occurrence, and the Owner whose Assessment is delinquent shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Assessment Lien shall be appurtenant to each such Parcel but shall be established only upon the failure to pay any such assessment due and upon the recording of a Notice of Assessment Lien with respect to the unpaid assessment. The Assessment Lien may be enforced in accordance with applicable statutes and laws relating to the foreclosure of realty mortgages. The obligation of any Owner for the payment of such assessments hereunder shall also remain the personal obligation of such Owner. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors.

3.2.15 Notwithstanding the foregoing, if the Owner of a Parcel or any portion thereof is a Condominium Association, then all Assessments for that Parcel or portion thereof will be billed to and payable by the Condominium Association, and the Assessment Lien shall not attach to any individual unit in the Condominium Association. Any such Condominium Association shall use its best efforts to strictly enforce all payment obligations of its members and/or to require the Condominium Association to raise its assessments as necessary to timely pay its obligations to the Association. To the extent the Association does not timely receive Assessments levied against a Condominium Association, the Assessment Lien for such delinquent Assessments shall attach to, and the Association shall be entitled to enforce its Assessment Lien on, the assets, including, assessment, dues or income received, receivable or payable in the future, of such Condominium Association by obtaining a charging order or other court order and requiring such Condominium Association to strictly enforce all payment obligations of its members and/or to require such Condominium Association to raise its assessments as necessary to timely pay its obligations to the Association without necessity for a vote within such Condominium Association.

3.2.16 Neither the Association nor any other Owner shall have any right to deny services to or disturb the peaceful possession by any member of such Condominium Association nor of any individual occupant ("**Occupant**") of a unit located in any building that is subject to the jurisdiction of such Condominium Association, due to the breach or default of the Condominium Association or of any other Occupants of other units located in any building that is subject to the jurisdiction of such Condominium Association. The foregoing, however, shall not prevent the Association or any Owner from pursuing a claim against any Occupant for liability arising out of specific acts, neglect, damage or similar matters caused by that Occupant ("**Occupant Liability**"). Each individual condominium unit in which the Occupant responsible for Occupant Liability resides shall be referred to herein as the "**Default Unit**".

3.2.17 The Owner of a Parcel or any portion thereof being utilized for commercial purposes may be a member of a Condominium Association and as such be the owner of a commercial unit in a Condominium (a "**Commercial Unit**"). The owner of the Commercial Unit, as landlord, may enter into leases and other occupancy agreements (individually, a "**Space Lease**") for tenants or occupants of portions of the Commercial Unit (individually, a "**Space Tenant**" and collectively, the "**Space Tenants**"). Neither the Association nor any other Owner shall have any right to deny services to or disturb the peaceful possession by any owner of a Commercial Unit nor of any Space Tenant of a Commercial Unit located in any building that is subject to the jurisdiction of a Condominium Association, due to the breach or default of that Condominium Association or the default of any owner of a Commercial Unit or of any Space Tenants located in any building that is subject to the jurisdiction of that Condominium Association. The foregoing, however, shall not prevent the Association or any Owner from pursuing a claim against any owner of a Commercial Unit or against any Space Tenant for liability arising out of specific acts, neglect, damage or similar matters caused by that owner or Space Tenant (hereinafter referred to as "**Tenant Liability**"). Each Commercial Unit that is occupied by an owner or Space Tenant responsible for Tenant Liability shall also be referred to herein as the "**Default Unit**".

3.2.18 At the request of the Association, the Condominium Association having jurisdiction over a Default Unit will lien the Default Unit and/or otherwise commence enforcement/collection actions against the Default Unit and the owner thereof.

3.2.19 The Assessment Lien is and shall be subordinate to the lien of any first priority lien deed of trust or first lien mortgage (hereinafter collectively referred to as the "**First Lien**") placed upon any Parcel for the purpose of financing or refinancing acquisition or development costs, in favor of any Person, it being the express intent of the Owners that the Assessment Lien shall be subject, subordinate and inferior to any such First Lien; provided, however, that:

(a) to the extent permitted by law, the foregoing subordination shall not apply to, and shall be ineffective to subordinate, any Assessment Lien to the extent that it secures those specific unpaid assessments for which a Notice of Assessment Lien has been recorded in the real property records of Maricopa County, Arizona, prior to the recordation of the First Lien;

(b) to the extent permitted by law, the foreclosure of any First Lien on such Parcel shall not terminate or restrict the continuing right to make assessments against the Parcel after such foreclosure, and/or to file and enforce Assessment Liens against the Parcel in the event of nonpayment of assessments made subsequent to the foreclosure; and

(c) the subordination of the Assessment Lien to a First Lien shall not be deemed to limit the liability of any Owner of such Parcel subsequent to a foreclosure of the deed of trust or mortgage in question (including, without limitation, the purchaser at the foreclosure sale whether such purchaser is the holder of the deed of trust or mortgage in question or otherwise) for any assessments made against the Parcel prior to the foreclosure of the First Lien, it being agreed and understood that the Assessment Lien shall remain at all times the personal liability of the Owner of the Parcel and shall be binding upon the successors and assigns of such Owner.

Upon receipt of a written request by an Owner or any interested Person, the Association shall issue, or cause an appropriate officer to issue, to such Owner or interested Person a written certificate setting forth whether or not (a) all Assessments (including costs and attorney's fees, if any, as provided above) have been paid with respect to any specified Parcel as of the date of such certificate, or (b) if all Assessments have not been paid, the amount of such Assessments (including costs and attorney's fees, if any) due and payable as of such date. Upon receipt of a written request from a Lender, Owner or Person designated by a Owner, the Association shall issue, or cause an appropriate officer to issue, a recordable statement setting forth the amount of any unpaid Assessment against the specified Parcel, such recordable statement to be furnished within seven business days after receipt of the request. Failure to provide such recordable statement within seven business days shall extinguish any lien for any unpaid Assessment then due in accordance with A.R.S. §33-1807(i). A reasonable charge may be made by the Association for the issuance of such certificates or statements. If a certificate or statement states

an Assessment has been paid, such certificate or statement shall be binding on the Association as against any bona fide purchaser of, or lender on, the Parcel in question.

3.3 Membership in Association; Voting Rights. Each Owner that is obligated to pay a portion of the Common Area Maintenance Costs hereunder shall be a member of the Association. The vote of Owners shall be determined on the basis of each Owner's fractional share of Common Area Maintenance Cost determined in accordance with Section 3.2 above. Each Owner shall be entitled to one vote (or fraction thereof) for each percentage of Common Area Maintenance Costs allocated to its Parcel in accordance with the provisions of Sections 3.2.4 and 3.2.5 above. Accordingly, to the extent that an Owner has been allocated a 22.7% share of the Common Area Maintenance Costs, that Owner shall be entitled to 22.7 votes in all matters to be decided by the Association. When more than one Person holds an ownership interest in any Parcel, all such persons shall constitute the Owner of that Parcel. The voting for such Parcel shall be exercised as such Persons determine among themselves, but in no event shall the vote be split. If such Persons are unable to agree how the vote with respect to their Parcel is to be cast, their vote shall not be counted. Each Owner shall have the right to grant a proxy or otherwise pledge the voting right of its Parcel to a Lender. In such event, only the vote of such Lender will be recognized if a copy of such proxy or other instrument pledging such vote has been Recorded and is tendered at the time of casting the vote for that Parcel. If more than one such proxy or instrument has been Recorded or is tendered, then the rights of the first Lender to so Record the proxy or other instrument shall be the only rights recognized with respect to such vote, regardless of the relative priority of the Lender's Mortgage.

3.4 Common Area Construction Standards and Limits. All Common Areas and all Improvements hereafter constructed or modified within any Common Area shall be consistent with those in a first-class, mixed use development as reasonably approved by the Association and shall be harmonious, integrated and consistent in nature, quality and intensity with the Improvements located on the Common Areas as of the date this Declaration is Recorded such that the addition of such Improvements to the Common Areas (other than those previously constructed in connection with the CPLP Parcel and those constructed in connection with the Chase Improvements) would not cause the Chase Parcel's share of Common Area Maintenance Costs to increase by more than ten percent (10%) per annum over the pre-existing level of such share. The Association shall not accept maintenance responsibility for any Common Areas until such time as the Improvements thereon have been completed, and Assessments for the Parcel associated with such Improvements have commenced. The landscaping of all Common Areas shall be installed and maintained at all times to, at a minimum, comply with all applicable City approved landscape plans pertaining thereto.

3.5 Common Area Maintenance Standards. The Common Areas and the Improvements thereon shall be managed, maintained and repaired in a manner consistent with a first class, mixed use development and consistent with management, maintenance and repair practices in effect as of the date this Declaration is Recorded for Common Areas and all Improvements thereon in existence at such time.

3.6 Building Maintenance Standards. All buildings and structures within Centerpoint Plaza shall be maintained and repaired in a manner consistent with a first-class, mixed use

development and consistent with the maintenance and repair practices in effect as of the date this Declaration is Recorded for of all Improvements in Centerpoint Plaza.

3.7 Nuisance; Violations. If (a) any portion of any Parcel is used or maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Parcels or other areas of Centerpoint Plaza which are substantially affected thereby or related thereto; (b) any portion of a Parcel is being used in a manner which violates this Declaration, the Board may (in its sole discretion and without obligation or duty to do so), by resolution, make a finding to such effect specifying the particular condition or conditions which exist (a "**Violation**") and may give notice of the Violation to the offending Owner that unless corrective action is completed within thirty (30) days after the date written notice of such Violation is deposited by the Association in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to such Owner at the address for that Owner then maintained by the Association (unless such corrective action is of a nature that reasonably requires more than thirty (30) days to complete, in which event unless such offending Owner immediately commences such corrective action and diligently and continuously prosecutes such corrective action to completion without interruption), the Association may cause appropriate corrective action to be taken at the offending Owner's cost. In this regard, if at the expiration of requisite period of time appropriate corrective action has not been taken and/or completed, the Association shall be authorized and empowered (in its sole discretion and with obligation or duty to do so) to cause such corrective action to be taken and to cause its agents to enter upon the Owner's Parcel to take any such correction action and to assess an Assessment in the amount of the cost thereof against such Owner's Parcel, which Assessment shall be due upon demand, shall bear interest at the rate of twelve percent (12%) per annum and shall be secured by the Assessment Lien. In addition, the Board shall have the right to impose a reasonable fine after notice and hearing against the offending Owner and such fine shall become a part of the Assessment to which the offending Owner and the Owner's Parcel are subject and shall be secured by the Assessment Lien.

ARTICLE 4

ENFORCEMENT

4.1 Enforcement. Each Owner shall be entitled by legal action to enforce this Declaration, by an action at law or in equity. Each Owner shall be entitled to recover its reasonable attorneys' fees and any other costs incurred in connection with such enforcement.

ARTICLE 5

TERM, AMENDMENTS; TERMINATION; DE-ANNEXATION

5.1 Term; Method of Termination. This Declaration shall be effective upon the original date of Recording of the Original Declaration and, as amended from time to time, shall continue in full force and effect for a term of twenty years from such original date of Recording. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten years each unless (a) at least seventy-five (75%) of the votes in the Association and that number of Lenders with Mortgages on Parcels having at least seventy-five (75%) of the

votes in the Association, and (b) all Owners of the Privates Roads in existence at such time, agree in writing to terminate this Declaration within six months prior to the expiration of the initial effective period hereof or any ten-year extension. If the required consents under (a) and (b) above are obtained to terminate this Declaration, there shall be Recorded a Certificate of Termination, duly executed by each consenting party. Thereupon, this Declaration shall have no further force and effect. Termination of this Declaration in accordance with the foregoing shall automatically terminate all easements created in accordance with Section 2.

5.2 Amendments. This Declaration may be amended with the consent of Owners holding at least seventy-five (75%) of the votes in the Association by Recording a Certificate of Amendment duly executed by each consenting party; provided, however, that the unanimous consent of all Owners shall be required for any amendment affecting the allocation of Common Area Maintenance Costs or any amendment affecting any voting rights or requirements set forth in this Declaration. The Certificate of Amendment shall be set forth in full the amendment so adopted. Notwithstanding the foregoing, no amendment to this Declaration that modifies the provisions of Section 2.2 shall be effective unless approved by each Owner that owns any portion of a Private Road.

5.3 Additional Amendment Requirements. Neither (i) any amendment to this Declaration applicable to one or more particular Parcels (but not all Parcels) pursuant to this Declaration or the corresponding provisions of any supplementary declaration, as appropriate, nor (ii) any amendment that would affect the amount of assessments (general or special) or the collection of same with respect to a Parcel under circumstances in which the same or similar action is not also being taken with respect to all other Owners or Parcels, as the case may be, shall be effective unless consented to in writing by the then-Owner of each Parcel in question.

5.4 De-Annexation of Fire Station Parcel. Notwithstanding anything to the contrary contained herein, the Owners hereby consent and agree that the Fire Station Parcel shall no longer be subject to this Declaration or any rights easements, privileges, obligations or liabilities hereunder, and the Fire Station Parcel shall be withdrawn from this Declaration and the jurisdiction of the Association.

ARTICLE 6

USE LIMITATIONS

6.1 Use Limitations. At any time when the Chase Parcel is occupied in whole or in part, by a bank or an entity performing bank related functions, no other Parcel or portion thereof shall, without the prior written consent of the Owner of the Chase Parcel, be utilized for a retail bank, or a retail bank branch or contain any automatic teller machine, except for automatic teller machines used in connection with the America West Credit Union or any successor to that entity.

ARTICLE 7

GENERAL PROVISIONS

7.1 Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to the existing Owners at the addresses specified below. Any Owners may designate a different address or addresses for notice by giving written notice of such change of address to all Owners. Notices shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

CPLP: c/o DMB Associates
Gainey Ranch Town Center II
7600 E. Doubletree Ranch Road
Suite 300
Scottsdale, AZ 85258-2137
Attention: General Counsel

City: City of Tempe
31 East Fifth Street
Tempe, AZ 85281
Attention: City Attorney

CPT: c/o DMB Associates
Gainey Ranch Town Center II
7600 E. Doubletree Ranch Road
Suite 300
Scottsdale, AZ 85258-2137
Attention: General Counsel

Chase: Chase Bankcard Services, Inc.
Chase Properties Group
2 Chase Manhattan Plaza, 8th Floor
New York, New York 10081-6500
Attention: Resource Management

With a copy to: Chase Bankcard Services, Inc.
100 W. University
Tempe, Arizona 85001
Attention: _____

Courtyard: HPTMI II PROPERTIES TRUST
c/o Hospitality Properties Trust
400 Centre Street
Newton, Massachusetts 02458
Attention: John Murray, President

7.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation Centerpoint Plaza.

7.3 Severability. If any provision of this Declaration, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration shall be construed as if such invalid part were never included therein.

7.4 Rule Against Perpetuities. If any of the privileges, convents or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of United States Senator John McCain and of United States Senator Jon Kyl.

7.5 Mortgage of Parcels. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for its property. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting any portion of Centerpoint Plaza, except only to the extent of its Parcel therein and any easements appurtenant thereto.

7.6 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

7.7 Assignment. The rights and obligations of each Owner under this Declaration shall inure to, and be binding upon, its successors and assigns as the successive Owners of each Parcel. Any assignment by an Owner of all or any portion of its rights and obligations under this Declaration shall be by Recorded instrument. Upon the sale or other conveyance by an Owner of its Parcel, the rights and obligations under this Declaration with respect to such Parcel shall be deemed automatically to have been assigned to, and assumed by, the new Owner of the Parcel except as may otherwise be expressly set forth in Recorded instrument.

7.8 Further Instruments. Each Owner agrees to execute, acknowledge, and deliver to a requesting Owner, upon reasonable request therefore, any additional agreements, instruments or

documents reasonably necessary or appropriate to secure to the requesting party any right or interest granted to such party under this Declaration.

7.9 Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, the Owners make no warranties or representations whatsoever that the plans presently envisioned for the complete development of Centerpoint Plaza can, or will be, carried out, or that any land now or hereafter subjected to this Declaration is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. No Person shall have any right to bring any action at law or in equity with respect to, arising out of, or in connection with any purported warranties or representations made in this Declaration or otherwise unless such Person is clearly and expressly given such right of action in writing.

7.10 Original Declaration Superseded. The Owners acknowledge and agree that this Declaration amends, restates and supersedes in its entirety the Original Declaration. Further, the Owners declare that this Declaration has been executed in conformance with the provisions of Section 5 of the Original Declaration.

ARTICLE 8

RIGHTS AND OBLIGATIONS

8.1 Rights and Obligations. Each Owner, the heirs, successors and assigns of each Owner, accepts the same subject to all covenants, conditions, restrictions, easements, privileges and rights herein contained, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, each Owner has caused this Declaration to be duly executed as of the date first above written.

CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership

By UHB Plaza Limited Partnership, an Arizona limited partnership, general partner

By W.B.S.D. Associates, Inc., an Arizona corporation, general partner

By:_____
Its:_____

CITY OF TEMPE, ARIZONA, a municipal corporation

By:_____
Its:_____

CPT DEVELOPMENT PARTNERS LIMITED PARTNERSHIP, an Arizona limited partnership

By: DMB Tempe Development, Inc., an Arizona corporation, its general partner

By:_____
Its:_____

CHASE BANKCARD SERVICES, INC., a Delaware corporation

By:_____
Its:_____

HPTMI II PROPERTIES TRUST, a Maryland real estate investment trust

By:_____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of W.B.S.D. Associates, Inc., an Arizona corporation, the general partner of UHB Plaza Limited Partnership, an Arizona limited partnership, the general partner of CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of CITY OF TEMPE, ARIZONA, a municipal corporation, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of DMB

Tempe Development, Inc., an Arizona corporation, the general partner of CPT DEVELOPMENT PARTNERS LIMITED PARTNERSHIP, an Arizona limited partnership, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of CHASE BANKCARD SERVICES, INC., a Delaware corporation, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of HPTMI II PROPERTIES TRUST, a Maryland real estate investment trust, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

CONSENT

The foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza is hereby consented to by LASALLE NATIONAL BANK, as Trustee for the registered holders of Morgan Stanley Capital I, Inc., Commercial Mortgage Pass-Through Certificates, Series 1997-C1, as successor to GMAC Commercial Mortgage Corporation, a California corporation, as Beneficiary under that certain Deed of Trust, Security Agreement and Fixture Filing recorded July 24, 1996, in the official records of Maricopa County, Arizona, as Instrument No. 96-0520340, as the holder of liens on portions of Centerpoint Plaza, and the undersigned agrees that any and all such liens in its favor are junior and subordinate to such Amended and Restated Declaration.

LASALLE NATIONAL BANK

By:_____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of LASALLE NATIONAL BANK, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

Exhibits

A	-	Legal Description of Centerpoint Plaza
A-1	-	Legal Description of the CPLP Parcel
A-2	-	Legal Description of the Chase Parcel
A-3	-	Legal Description of the Courtyard Parcel
A-4	-	Legal Description of the CPT Parcel
A-5	-	Legal Description of the Irby Parcel
A-6	-	Legal Description of the Mixed Use Parcel
A-7	-	Legal Description of the Fire Station Parcel
B	-	General Depiction of location of Common Area

Exhibit A-6
Legal Description of the Mixed Use Parcel

A parcel of land being a portion of Lots 7A and 7B of Centerpoint Plaza, as recorded in Book 544, page 27, Maricopa County Records (M.C.R.) and a portion of Lot 6 of Centerpoint, as recorded in Book 369, page 31, M.C.R. lying within Section 16, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northeast corner of Lot 7A of said Centerpoint Plaza;
THENCE along the north line of said Lot 7A, South 89E59'02" West, a distance of 35.00 feet, to the centerline of Maple Avenue (alignment) and the **POINT OF BEGINNING**;
THENCE leaving said north line, along said centerline, South 00E01'16" East, a distance of 387.50 feet;
THENCE leaving said centerline, South 89E58'44" West, a distance of 18.46 feet;
THENCE South 00E01'16" East, a distance of 95.62 feet, to the southerly line of said Lot 7A and the beginning of a non-tangent curve;
THENCE along said southerly line, southerly along said curve, having a radius of 20.00 feet, concave northwesterly, whose radius bears North 89E44'20" West, through a central angle of 44E44'09", a distance of 15.62 feet, to the curve's end;
THENCE continuing along said southerly line and the projection thereof through Lot 6 of said Centerpoint, back onto said southerly line, South 44E59'49" West, a distance of 238.96 feet, to the beginning of a curve;
THENCE southwesterly along said curve, having a radius of 45.00 feet, concave southeasterly through a central angle of 42E19'04", a distance of 33.24 feet, to a point of intersection with a non-tangent line;
THENCE South 80E59'49" West, a distance of 49.62 feet, to the southern most corner of said Lot 7A;
THENCE leaving said southerly line, along the westerly line of said Lot 7A, North 00E00'00" East, a distance of 135.38 feet;
THENCE North 30E33'15" West, a distance of 77.00 feet;
THENCE North 89E59'24" West, a distance of 87.00 feet;
THENCE North 00E00'36" East, a distance of 80.00 feet;
THENCE South 89E59'24" East, a distance of 17.78 feet, to the west line of the east 4.00 feet of Lot 7B of said Centerpoint Plaza;
THENCE leaving said westerly line, along said west line, North 00E00'36" East, a distance of 422.00 feet, to the southerly right-of-way line of 5th Street as shown on said Centerpoint Plaza;

THENCE leaving said west line, along said southerly right-of-way line, South 89E59'24" East, a distance of 363.51 feet, to the **POINT OF BEGINNING**.

(revised 3/2/01)

ATTACHMENT #2

When Recorded, Return to:
Neil D. Biskind, Esq.
Biskind, Hunt & Taylor, P.L.C.
11201 North Tatum Boulevard, Suite 330
Phoenix, Arizona 85028

PARKING EASEMENT AND COST SHARING AGREEMENT

THIS PARKING EASEMENT AND COST SHARING AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 2001 by and between BROWNSTONE 6TH & MAPLE, L.L.C., an Arizona limited liability company (**"Brownstone"**), CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership ("**CPLP**"), and the CITY OF TEMPE, ARIZONA, an Arizona municipal corporation ("**City**").

RECITALS

A. Brownstone is the owner of certain real property located in Tempe, Arizona, legally described in Exhibit "A" attached hereto (the "**Brownstone Parcel**"), which is located within the Centerpoint Plaza mixed use development (the "**Development**"), having concurrently purchased the same from CPLP; and

B. CPLP, and CPT Development Partners Limited Partnership, an Arizona limited partnership ("**CPT**"), an affiliate of CPLP, are the owner of certain parcels of real property within the Development (collectively, the "**Centerpoint Parcels**"), which are legally described on Exhibit "B" attached hereto; and

C. CPLP (including its designees, permitees, licensees and invitees) and the City (including its designees, permitees, licensees and invitees) are currently utilizing the Brownstone Parcel for purposes of parking motor vehicles in the parking spaces located in the paved parking area which is accessible primarily from the entrance off Maple Avenue (the "**Existing Spaces**") (the Existing Spaces do not include the parking spaces located on the paved portion of the western portion of the Brownstone Parcel which are primarily accessible from 5th Street); and

D. In connection with the sale of the Brownstone Parcel by CPLP to Brownstone, and as a material part of the consideration for the sale of the Brownstone Parcel, Brownstone has agreed to grant to the City and CPLP, its successors and assigns, certain easements with respect to the CPLP Spaces (as defined below) on the Brownstone Parcel, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Unless the context clearly requires otherwise, the following terms used in this Agreement are defined as follows. Defined terms appear throughout this Agreement with the initial letter of such term capitalized.

(a) "**Authorized Users**" means the tenants, designees, permitees, licensees and invitees of the City and CPLP (or its assignees, including CPT) identified from time to time in writing to Brownstone by CPLP (or its assignees, including CPT) with respect to the CPLP Spaces, and identified from time to time in writing to Brownstone by the City with respect to the City Spaces.

(b) "**Brownstone Spaces**" means the parking spaces located on the Brownstone Parcel from time to time that are not either CPLP Spaces or City Spaces.

(c) "**City Spaces**" shall mean any of the Existing Spaces, Temporary Spaces and New Spaces, which collectively are being made available, from time to time, for use by the City and any Authorized Users of the City in connection with the grant of the easement described in Paragraph 2(a) below. Initially, there shall be 175 City Spaces and various permits related thereto as reflected on Exhibit "H" attached hereto, but the parties acknowledge that such allocation of the Parking Spaces may change from time to time as provided in this Agreement.

(d) "**Condominium**" shall have the meaning assigned to such term in the Condominium Act.

(e) "**Condominium Act**" means the Arizona Condominium Act, A.R.S. § 33-1201, et seq., as amended from time to time.

(f) "**CPLP Spaces**" shall mean any of the Existing Spaces, Temporary Spaces and New Spaces, which collectively are being made available, from time to time, for use by CPLP and any Authorized Users of CPLP in connection with the grant of the easement described in Paragraph 2(a) below. Initially there shall be 165 CPLP Spaces and various permits related thereto as reflected on Exhibit "H" attached hereto, but the parties acknowledge that such allocation of the Parking Spaces may change from time to time as provided in this Agreement.

(g) "**Default Rate**" shall mean the fluctuating per annum rate of four percent (4%) in excess of the Prime Rate. The Default Rate shall be subject to fluctuation based upon the Prime Rate of interest in effect from time to time, and each change in the interest rate will become effective without notice on the same day as the Prime Rate changes.

(h) "**Existing Spaces**" shall mean the motor vehicle parking spaces existing on the Brownstone Parcel as described in Recital C above.

(i) "**Garage**" shall mean any parking garage constructed or to be constructed on the Brownstone Parcel in which Brownstone has designated any portion thereof as containing any Parking Spaces.

(j) "**New Space**" or "**New Spaces**" shall mean up to three hundred forty (340) motor vehicle parking space(s) located on the Brownstone Parcel (either on the surface or in a

Garage), as same may be replaced, redesigned or relocated in accordance with the provisions of this Agreement, which replace all or any portion of the Existing Spaces. Notwithstanding that there are more than 340 Existing Spaces, Brownstone shall only have the obligation to provide 340 New Spaces to replace all of the Existing Spaces.

(k) "**Parking Facilities**" shall mean any Garage(s) and surface parking areas adjacent to such Garage(s), together with all driveways, ramps, paved areas, walkways, stairs, elevators, Primary Gate System and such other improvements and equipment as may from time to time be located on the Brownstone Parcel, made available for, or required in connection with, utilization of any of the Parking Spaces.

(l) "**Parking Spaces**" shall mean any combination of the CPLP Spaces and the City Spaces totaling 340. Unless otherwise agreed to in writing executed by the City and CPLP and delivered to Brownstone, the total number of CPLP Spaces shall not exceed 165 and the total number of City Spaces shall not exceed 175.

(m) "**Primary Gate System**" shall mean any ground-level access system (including all gates, card readers and other equipment) serving the entire Garage.

(n) "**Prime Rate**" shall mean the fluctuating rate announced from time to time by Bank One, Arizona, N.A. (**"Bank"**), or its successor, as its prime rate (which rate may not be the lowest, best or most favorable rate of interest which Bank may charge on loans to its customers). If Bank ceases to announce its prime rate, the Prime Rate shall be equal to a "prime rate" announced from time to time by a different financial institution determined by Brownstone.

(o) "**Public Parking Spaces**" shall mean any combination of the New Spaces and the Brownstone Spaces which during the particular time of evaluation are: (i) available generally to public users free or for an hourly and/or event pay to park fee; (ii) not subject to hourly, daily or other parking permit or other parking rights provided to, or for the benefit of, designated third parties; and (iii) general accessibility thereto is not limited beyond the Primary Gate System.

(p) "**Temporary Spaces**" the motor vehicle parking spaces to which all or any portion of the Existing Spaces and/or New Spaces are temporarily relocated in accordance with the provisions of this Agreement. All Temporary Spaces shall be located on either the lot located at Fifth Street and Farmer and/or the surface lot and/or covered lot at Hayden Square and/or the Chase Parking Garage located in the Development known as "P-2", and/or to such other location as the parties may reasonably agree; provided however, that any surface lot or other location for the Temporary Spaces must at all time be lighted at night time, and to the extent any of the above described locations are not lighted at night time, then the Existing Spaces and/or New Spaces may not be temporarily relocated to, or remain at, such location unless and until night time lighting is provided and continually maintained. Notwithstanding anything to the contrary contained in this Agreement, Brownstone shall be obligated only to provide Temporary Spaces in an amount equal to the difference between 340 and the aggregate total number of usable Existing Spaces and New Spaces.

2. Grant of Easements. Brownstone hereby grants to the City and to CPLP and its successors and assigns, the following easements:

a. A perpetual, exclusive easement over, upon and across the Brownstone Parcel for purposes of parking on a continuous and uninterrupted basis (subject to Force Majeure as defined in Paragraph 18 below), motor vehicles in three hundred forty (340) motor vehicle parking spaces (such spaces being defined above as the "Parking Spaces") subject to the rights of CPLP in and to the CPLP Spaces and the rights of the City in and to the City Spaces, respectively, as such rights, and the allocation of City Spaces and CPLP Spaces, may change from time to time all as set forth below in Paragraph 2(e);

b. A non-exclusive easement for vehicular access over, upon and across all driveways, ramps and paved areas improved for vehicular traffic within the Brownstone Parcel, as reasonably necessary to provide convenient vehicular access to and from the Parking Spaces, including such driveways, ramps and paved areas providing access to the Garage (**"Access Easement Areas"**); and

c. A non-exclusive easement for pedestrian traffic over all stairs, elevators, walkways and sidewalks, and all driveways, ramps and paved areas within the Brownstone Parcel as reasonably necessary to provide convenient pedestrian access to and from the Parking Spaces.

d. The foregoing easements are for the benefit of the City, CPLP and all Authorized Users designated by the City and CPLP. Notwithstanding anything to the contrary contained in this Agreement, until Commencement of Construction Activities as provided below, all of the Parking Spaces will consist of the approximate 352 Existing Spaces. If during the continuation of Construction Activities Existing Spaces will be rendered unusable or inaccessible leaving less than 340 Existing Spaces, Brownstone shall relocate the requisite number of Existing Spaces to Temporary Spaces until such time as a New Space is finished and available to CPLP or the City, as applicable, for the use of its respective Authorized Users as provided below. The parties understand and acknowledge that, if any Construction Activities occur on the Brownstone Parcel in phases, then the Parking Spaces may, from time to time, consist of a combination of some Existing Spaces and/or some Temporary Spaces and/or some New Spaces while such Construction Activities are ongoing. The parties also understand and acknowledge that, in the future, all or any portion of the New Spaces may be damaged, destroyed, redesigned or redeveloped such that all or some of the New Spaces may need to temporarily become Temporary Spaces and/or be replaced in accordance with the provisions of Paragraph 3(g) below. Effective upon the City's issuance of a certificate of occupancy, temporary certificate of occupancy or other similar permit allowing for the occupancy and utilization of the portion of the Parking Facilities subject to the City's and CPLP's easement rights and the availability for use thereof for all 340 motor vehicle parking spaces, the easement for the Parking Spaces granted pursuant to Paragraph 2(a) above, and the vehicular and pedestrian access easements granted pursuant to Paragraphs 2(b) and 2(c) above, shall be deemed amended (without need for further action by any party) to lie over, upon and across the New Spaces and the portions of the Parking Facilities reasonably necessary to provide convenient vehicular and pedestrian access to and from the New Spaces.

e. The parties understand and acknowledge that, subject to certain limitations set forth in this Agreement (including, Paragraphs 3(e)(ii), 9 and 14 and as set on Exhibit "H") CPLP has the right to control and make all decisions with respect to the CPLP Spaces, and as between CPLP and the City, to control and make all decisions with respect to the City Spaces, as it deems appropriate, including, without limitation, designating all or any portion of the Parking Spaces as exclusive spaces which provide an exclusive right to use the applicable space for 24 hours a day, 7 days a week to a specific Authorized User and/or to designate any Parking Space as a visitor space, and/or to designate any Parking Space to provide Authorized Users the right to park in such space only during certain hours. Brownstone shall have no obligation or responsibility whatsoever to enforce the improper utilization of any Parking Spaces.

f. CPLP shall initially designate which Parking Spaces are CPLP Spaces and which are City Spaces. Additionally, upon at least 30 days prior written notice to the City and Brownstone, CPLP has the right to modify the designated location of all CPLP Spaces and all City Spaces. Without the written consent of the City, however, CPLP may not designate any City Spaces as exclusive spaces except as otherwise provided on Exhibit "H". Brownstone acknowledges that, from time to time, subject to the provisions of Paragraph 14, the City and CPLP may agree to allocate the number of Parking Spaces between City Spaces and CPLP Spaces on a basis other than the 175/165 ratio described above. Upon receipt of written notice from the City and CPLP (or its assignees) of any new allocation, Brownstone shall acknowledge any such re-allocation and thereafter, all Shared Costs and revenues shall be allocated accordingly. In no event may CPLP and City reallocate Parking Spaces if at the time of any attempted reallocation, either CPLP or the City is in breach of its obligations under this Agreement. Concurrently with any new allocation, CPLP shall provide written notice to Brownstone and the City designating what Parking Spaces are CPLP Spaces and what Parking Spaces are City Spaces.

g. The parties acknowledge and agree that Brownstone may temporarily restrict or close some access points to the Parking Spaces, including driveways, ramps, other paved areas, stairs, elevators, walkways and/or sidewalks, from time to time, to accommodate (i) planned traffic flows and related matters associated with special events in downtown Tempe, and/or (ii) construction activities on or in connection with the Brownstone Parcel, expressly provided that: (A) at least one method of vehicular and pedestrian access to the Parking Spaces shall be maintained at all times except as may be due to Force Majeure (as defined in Paragraph 18 below); (B) Brownstone shall provide advance written notice to CPLP and the City prior to any such restriction or closure, unless in the case of an emergency in which event subsequent notice shall be provided as soon as reasonably possibly thereafter; and (C) Brownstone shall use commercially reasonable efforts to minimize the restriction or closure to only that extent reasonably needed for the special event or construction activity, and in any event such restriction or closure with respect to accommodating planned traffic flows and related matters associated with each special event in downtown Tempe may only extend for a period of up to five (5) consecutive days.

3. Construction on Brownstone Parcel.

a. Without limiting the effect of any other restrictions on construction on the Brownstone Parcel, CPLP and Brownstone agree that no construction, reconstruction,

demolition, site preparation or other similar activities on the Brownstone Parcel that would adversely affect the exercise of the easement rights granted under Paragraph 2 above ("**Construction Activities**") may be Commenced (as defined below) unless: (A) if less than 340 Existing Spaces and/or New Spaces will be usable and accessible during such Construction Activities, then prior to such Construction Activities being Commenced, Brownstone shall cause the requisite deficit number of Existing Spaces and/or New Spaces to be temporarily relocated to Temporary Spaces so that at all times during and after such Construction Activities a total of at least 340 Parking Spaces (either Existing Spaces, New Spaces and/or Temporary Spaces) will be usable and accessible; (B) at the completion of such Construction Activities Brownstone will replace each of the relocated Existing Spaces with New Spaces described on Exhibit "C"; and (C) Brownstone shall have provided a performance bond and payment bond as described below pursuant to which the issuer of the bond shall be committed to complete all improvements which Brownstone then intends to Commence (including the installation of all below grade improvements and/or the backfill and compaction of all excavation needed to ensure a useable at grade surface on the Brownstone Parcel). As used herein, the term **"Commence"** or "**Commenced**" shall be deemed to refer to the physical commencement of any improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the Brownstone Parcel from its state existing on the date hereof. The bonds to be issued in accordance with the foregoing shall be issued: (i) in the amount of 100% of the contract amount for any and all proposed improvements; (ii) wherein CPLP and City are listed as an obligee; and (iii) otherwise utilizing American Institute of Architects ("**AIA**") form A312 (or any successor thereto promulgated by the AIA or any successor organization) or such other forms reasonably acceptable to CPLP, or if any lender to Brownstone requires an AIA form A311 instead of an A312, and such lender is unwilling to accept an A312 form, then the A311 form shall be deemed acceptable to CPLP. No alteration of the AIA bond forms shall be acceptable without CPLP's written consent, which shall not be unreasonably conditioned, withheld or delayed. The bonds shall be issued by a surety licensed to transact surety business and admitted in the State of Arizona and the surety shall be rated "A" or better by A.M. Best with a financial size category of X or higher. The surety shall also be a company acceptable to issue Federal bonds under Title 31 of the United States Code as listed in the U.S. Department of the Treasury Circular 570 and the amount of the bond to be issued shall not exceed that surety's applicable underwriting limitation as listed in the U.S. Department of the Treasury Circular 570, or such other surety reasonably acceptable to CPLP.

b. The parties acknowledge that the design of the Brownstone Parcel, including the Garage and access routes thereto and any other Parking Facilities, is reflected on the Preliminary PAD approved by the City Council on March *___, 2001 and is preliminary and subject to change. Any changes that affect the location, size, configuration or other material aspects of the New Spaces, or any material adverse changes to the access contemplated under Paragraphs 2(b) and/or 2(c) above, shall be subject to CPLP's approval under Paragraph 15 below.

c. Once any Existing Spaces or Temporary Spaces are replaced with New Spaces in the Garage, Brownstone shall not alter or modify the Garage or any other ramp or other paved area providing access to the Garage or other portion of the Parking Facilities) in a way that would adversely affect the exercise of the easement rights granted under Paragraph 2 above, whether temporarily or permanently, without CPLP's approval under Paragraph 15

below. Without limiting the foregoing, CPLP shall not be entitled to withhold approval provided the new location, size and components of the Parking Spaces (including access thereto) are substantially equivalent in quality to those described on Exhibit "C". Subject to the foregoing requirements, Brownstone shall have the right to make such alterations and modifications to the Parking Facilities that it reasonably deems necessary, but neither the City nor CPLP will be responsible for any share of the costs thereof unless such costs fall within the definition of "Shared Costs" set forth in Paragraph 6 below or unless CPLP or the City, as applicable, otherwise agrees in writing. Notwithstanding the foregoing, Brownstone will have the right to make alterations or modifications to the Parking Facilities that are mandated by governmental agencies having relevant jurisdiction, and the costs of such alterations or modifications will be Shared Costs.

d. Not less than one hundred twenty (120) days before any Construction Activities relating to the Existing Spaces is to Commence, Brownstone shall give notice to the City and CPLP (the "**Construction Notice**") of: (i) the nature of the Construction Activities contemplated; (ii) the anticipated impact of such Construction Activities on the Existing Spaces; (iii) the proposed number and location of Temporary Spaces that Brownstone desires to designate (subject to the requirements and approvals, as applicable, under Paragraph 3(a)); and (iv) the period of time during which the Construction Activities are to be conducted. Following delivery of the Construction Notice and prior to commencement of construction, Brownstone must deliver to CPLP and the City evidence of the existence of all insurance required to be maintained in accordance with the provisions of Paragraph 5 below.

e. CPLP and Brownstone acknowledge the importance of sufficient parking in the Development for the long term success of the Development. Therefore CPLP and Brownstone agree on the following parking requirements:

(i) The Brownstone Parcel will, at all times, include a total number of parking spaces that complies with the formulas, ratios and requirements set forth on Exhibit "F" with respect to the building space located on the Brownstone Parcel, subject to Force Majeure (as defined in Paragraph 18 below); provided, however, that portions of these parking requirements may be satisfied off the Brownstone Parcel if and to the extent building owners within the Brownstone Parcel have secured the right to use parking spaces elsewhere in the Development for so long as such parking spaces continue to be usable.

(ii) CPLP will, at all times, maintain an amount of "public parking" (i.e., available generally to public users free or for an hourly and/or event pay to park fee and not subject to reserved monthly or other parking rights or limitations) within the Development that satisfies the requirements set forth on Exhibit "G", inclusive of any of the Parking Spaces that CPLP elects to make available (either by written notice to Brownstone or by conspicuously marking the spaces) for public parking, subject to Force Majeure (as defined in Paragraph 18 below).

f. Brownstone intends to subject the Brownstone Parcel to a Condominium. To the extent the New Spaces and access easements are located entirely within one or more Condominium Units and/or Common Elements or Limited Common Elements within the Condominium, CPLP and the City will fully cooperate with Brownstone to amend this Agreement to restrict the easements granted in Paragraph 2 above to the applicable Condominium Units and/or Common Elements or Limited Common Elements, such that the rest of the Condominium is no longer subject to such easements.

g. The parties acknowledge that with the easements granted in Paragraph 2 above being perpetual, it is likely that the Brownstone Parcel or portions thereof will be redesigned and/or redeveloped periodically in the future while such easements are in place. If the fee owner(s) of the improvements subject to the easements determines to redesign and/or redevelop the Brownstone Parcel or the Garage and/or portions thereof and/or access thereto, CPLP and the City will reasonably cooperate therewith by amending this Agreement to reasonably relocate the easements including the location of the New Spaces that are relocated as a result of such redesign and/or redevelopment, subject to CPLP's approval under Paragraph 15. Moreover, to the extent that all or any of the New Spaces will not be reasonably available or accessible for use as a result of any such redesign or redevelopment, the provisions of Paragraph 3 above will fully apply, including the requirement that Temporary Spaces be provided until the redesign or redevelopment is completed. Notwithstanding anything to the contrary contained in Paragraph 2(a) above, if any Parking Spaces are relocated as a result of any redesign or redevelopment of the Garage or Brownstone Parcel, the easements for the Parking Spaces and access thereto granted pursuant to Paragraph 2 above shall be deemed amended (without need for further action by any party) to lie over, upon and across the resulting New Spaces and any related Parking Facilities as same have been redesigned and/or redeveloped with the consent of CPLP as provided above, and the City's and CPLP's easement right in and to such New Spaces and related Parking Facilities shall be at all times senior to any and all rights of persons who acquire any interest in the Brownstone Parcel after the date of this Agreement without the necessity of subordinating such rights or executing and/or recording any documents or instruments to confirm the existence and seniority of such easement rights. Promptly following the receipt of a written request of any party, however, the other parties shall reasonably cooperate to execute, acknowledge and deliver such recordable instruments as may be reasonably requested to confirm of record location of the City's and CPLP's easement right in and to such redesigned and/or redeveloped New Spaces and related Parking Facilities.

h. The parties acknowledge that, without internal gating within the Garage, Garage users who are Authorized Users of any party will or may have access to portions the Garage controlled by another party. Accordingly, if and to the extent Authorized Users of any party may have access to portions of the Garage controlled by another party, then, in addition to the requirements set forth in Paragraph 3(e) above, the parties will each limit the number of permits/stickers/cards/codes/other access methods consistent with the formulas, ratios and/or other requirements set forth on Exhibit "H".

i. Until any of the Existing Spaces are replaced with Temporary Spaces, all decisions concerning the utilization and operation of the Existing Spaces, including, without limitation, all decisions regarding utilization of the Existing Spaces for special events, availability of the Existing Spaces to the public and/or fees to be charged for use of the Existing

Spaces, shall be within the sole discretion and control of CPLP; provided, however, that: (a) CPLP shall at all times maintain commercial general liability insurance that covers the Property in an amount not less than Two Million Dollars ($2,000,000) per occurrence, and no less than Five Million Dollars ($5,000,000) in the aggregate that names Brownstone as an additional insured; (b) CPLP shall indemnify, defend and hold harmless Brownstone for, from and against any and all claims, demands, causes of action, damages, costs or expenses arising out of any personal injury, physical damage to property or mechanics' or materialmen's liens which may be asserted against Brownstone or the Brownstone Parcel as a result of the use of the Existing Spaces by CPLP or its tenants, designees, permitees, licensees and invitees (except to the extent caused by the activities of Brownstone or its members, manager, and/or their respective owners, employees, directors, officers, agents, affiliates, successors and assigns). While CPLP retains control over the utilization and operation of the Existing Spaces: (x) CPLP shall provide all insurance covering the Existing Spaces contemplated by Paragraph 5 below; and (y) no costs of operating and maintaining the portion of the Brownstone Parcel upon which the Existing Spaces are located shall be Shared Costs (as defined in Paragraph 6 below); and (z) CPLP shall be solely responsible for all such costs (including its equitable share of real property taxes). Once any of the Existing Spaces are relocated, then all costs thereafter incurred to operate and maintain the portion of the Brownstone Parcel upon which any Existing Spaces remain shall be Shared Costs as provided below.

j. Other than revenues generated by the City from its Authorized Users, CPLP shall be entitled to all revenues generated from the Existing Spaces and, if applicable, from the Temporary Spaces; Brownstone acknowledging that it is not entitled to any revenues from the Existing Spaces or Temporary Spaces.

k. Once the New Spaces are located in the Garage, then, except as provided below, Brownstone shall be responsible for, and shall be in control of, the management and operation of the Parking Facilities. The parties agree, however, that unless otherwise agreed to in writing by the parties to this Agreement, the Parking Facilities shall be operated consistent with the provisions of Exhibit "D" attached hereto.

4. Maintenance and Operation. Except as otherwise provided in Paragraph 3(i) with respect to the Existing Spaces, Brownstone will continuously operate, clean, maintain and repair the Parking Spaces and Parking Facilities as necessary to keep them in good condition and in a condition consistent with similar first-class parking facilities in the metropolitan Phoenix area, including restriping of all parking spaces as reasonably necessary. Except as otherwise provided in Paragraph 3(i) above and as provided below, all costs reasonably incurred in connection therewith and all such reasonable costs for the balance of the Parking Facilities, or the Condominium Units containing the Parking Facilities, if applicable under Paragraph 3(f), will be Shared Costs. Brownstone will have the right to enter upon the Parking Spaces as necessary in connection with the foregoing obligations and the same will not constitute a violation of either the City's or CPLP's easements or rights hereunder. Brownstone shall operate the Parking Spaces and Parking Facilities as a reasonable and prudent owner would do and shall schedule cleaning, maintenance, repairs and other services to reasonably minimize interference with operation of the Parking Spaces and Parking Facilities and with access to and use of the Parking Spaces consistent with good and efficient operation, but Brownstone will have no responsibility for any such interference if Brownstone's actions are reasonable and are not discriminatory

against either CPLP's, the City's or any Authorized User's rights and the Parking Spaces. Notwithstanding the foregoing, if all or any of the Parking Spaces and/or all or any portion of the Parking Facilities is damaged or destroyed through the act of any of the parties, or their respective designees, permitees, licensees and invitees (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such party to pay, within thirty (30) days following receipt of a written invoice therefor, all costs reasonably incurred by Brownstone to repair the damage or destruction to the extent any insurance proceeds available do not cover the same, provided that any liability imposed on a party hereunder shall not limit or prejudice the right of the party to pursue any available legal remedies against the person(s) causing such damage or destruction. Each party hereby waive any rights one may have against the others on account of any loss or damage occasioned to Brownstone, the City or CPLP, as the case may be, or their respective property, the Brownstone Parcel, its contents or to other portions of the Development, arising from any risks covered by the insurance required to be maintained as described in Paragraph 5 below and from any risk covered by any other insurance then in effect. In addition, the parties, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any such insurance company may have against the others. The foregoing waivers of subrogation shall be operative only so long as no policy of insurance is invalidated thereby.

5. Insurance and Damage or Destruction of the Parking Facilities.

a. Except as otherwise provided in Paragraph 3(i) above, Brownstone shall at all times maintain in effect a property insurance policy that, at a minimum, covers the Parking Spaces and driveways, lights and other parking related improvements on the land upon which such Parking Spaces are located. To the extent that the policy covers improvements other than the Parking Spaces and related driveways, lights and other parking related improvements, the policy shall, by way of endorsement, expressly provide that any loss suffered under such policy as a result of any claim made with respect to improvements other than the Parking Spaces and driveways, lights and other parking related improvements shall not cause any reduction in the coverage afforded with respect to Parking Spaces and driveways, lights and other parking related improvements that are unrelated to any such claim. Prior to relocating any Parking Spaces that are not currently located in a Garage, Brownstone shall also obtain, and thereafter maintain in effect, a property insurance policy that covers the applicable Parking Facilities into which any Parking Spaces are to be located. The insurance policy shall be issued in an amount not less than one-hundred percent (100%) of full replacement cost of the Parking Spaces, and if applicable, the Parking Facilities, providing protection against any all perils generally included within the "Special Form" classification, and which shall name Brownstone, the City and CPLP as loss payees.

b. In addition, except as otherwise provided in Paragraph 3(i) above, at all times from and after the date hereof Brownstone shall maintain commercial general liability insurance that covers the Parking Spaces and, prior to relocating any Parking Spaces into a Garage, also covers the applicable Parking Facilities, in an amount not less than Two Million Dollars ($2,000,000) per occurrence, and no less than Five Million Dollars ($5,000,000) in the aggregate. Brownstone or the applicable property owners providing the Temporary Spaces may provide the required insurance. The foregoing liability insurance policy (a) shall be written on an occurrence basis, (b) shall name the City and CPLP and its constituent partners, and the

constituent partners of its constituent partners, and the respective related and affiliated entities of each of the foregoing, and the respective directors, officers, agents, employees, volunteers, members, trustees, and shareholders of each of the foregoing, as "additional insured", (c) shall be issued by an insurer and in a form approved by CPLP, which approval shall not be unreasonably conditioned, withheld or delayed, (d) shall be primary on a non-contributory basis, (e) shall not be cancelled or non-renewed, nor shall any material change be made to the policy, without at least thirty (30) days prior written notice to CPLP and the City (f) shall have a deductible not in excess of $50,000, and (g) shall include an endorsement acknowledging the waiver of subrogation contained herein.

c. Brownstone shall provide CPLP and the City with certificates evidencing the insurance coverages required hereunder with respect to the Existing Spaces prior to or concurrently with the execution hereof, and thereafter within twenty (20) days following written request therefor, and shall send replacement certificates to CPLP and the City as policies are renewed, replaced or modified. Brownstone shall not Commence any Construction Activities that will require Existing Spaces to be replaced with Temporary Spaces unless and until it delivers evidence to the City and CPLP of the existence of the insurance required to be maintained in accordance with the foregoing. The cost of such insurance coverage shall be Shared Costs.

d. If Brownstone fails to provide evidence of insurance as required above, Brownstone shall be deemed to not have the required insurance in place, and notwithstanding anything to the contrary contained herein, CPLP or the City may, without any obligation to do so, after providing written notice to the other parties, immediately obtain the required coverages at Brownstone's expense (subject to it being a Shared Cost as provided above). If CPLP or the City, without any obligation to do so, obtains any such insurance coverage, all sums expended in connection therewith shall be immediately due and payable to the City or CPLP, as applicable and interest shall accrue on such sums from the date expended until repaid at the Default Rate.

e. The parties acknowledge that the policies required above may be common policies covering all or portions of the larger Condominium, provided that the coverages and cost is reasonably allocated between units, areas and uses by the insurance agent issuing such policy with the consent of CPLP as contemplated by Paragraph 15 below.

f. If there is any casualty loss, damage or destruction to any Parking Spaces, or to the Parking Facilities or any improvements on the Brownstone Parcel (including driveways, ramps, pathways, stairs, elevators, etc.) that in any way materially impairs the utility or accessibility of any of the Parking Spaces, Brownstone will promptly rebuild and restore the Parking Spaces, the Parking Facilities or such other improvements as necessary to restore the utility and accessibility of such Parking Spaces consistent, and substantially in compliance, with the original plans and specifications therefor, except as may be mandated by relevant governmental agencies or building, health and safety or insurance codes and except as may be approved in writing by CPLP, which approval shall be subject to the provisions of Paragraph 15 below. Brownstone and CPLP will apply all proceeds of the property insurance required to be maintained under Paragraph 5(a) above to such rebuilding and restoration. If any Existing Spaces or New Spaces become unusable or inaccessible as a result of a casualty, then, utilizing commercially reasonable efforts, Brownstone shall provide Temporary Spaces to replace such

Existing Spaces or New Spaces as soon as possible after such casualty, and the limitation on Shared Costs as set forth in Paragraph 6(b) shall not be applicable to any Temporary Spaces provided to replace Existing Spaces after a casualty. Moreover, Brownstone understands and acknowledges that any Temporary Spaces provided in accordance with the foregoing are not intended to be permanent replacements of Existing Spaces and/or New Spaces, and if any Parking Spaces required to be rebuilt or restored in accordance with the foregoing are not able to be rebuilt or restored in accordance with the original plans and specifications therefore, Brownstone shall in any event use commercially reasonable efforts to replace and restore such spaces as soon as possible with other permanent spaces located on the Brownstone Parcel.

6. Shared Costs.

a. Subject to the sharing ratios described below and as otherwise described in Paragraph 3(i) above, CPLP, for itself and its successors and assigns, and the City covenant to pay, severally and not jointly: (i) all costs for operating, managing, cleaning, maintenance, repair and replacement of the Existing Spaces and Temporary Spaces, and for the insurance coverage required to be maintained under Paragraph 5 for the Existing Spaces and Temporary Spaces, and all real property and personal property taxes for the Existing Spaces and Temporary Spaces, and all costs paid by Brownstone or payable by Brownstone to the property owner in maintaining the continuous compliance of the Existing Spaces or Temporary Spaces with all governmental requirements, to the extent such costs are incurred for the period of CPLP's or the City's (as applicable) rights thereto, and (ii) a portion of all costs for operating, managing, cleaning, maintenance, repair and replacement of the Parking Facilities, and for the insurance coverage required under Paragraph 5 above, and all real property and personal property taxes directly attributable to the Parking Facilities (and no other improvements on the Brownstone Parcel) (prorated as applicable), and the costs paid by Brownstone in maintaining the continuous compliance of the Parking Facilities with all governmental requirements, but excluding certain security and other costs as described below (collectively the "**Shared Costs**"), which portion shall be equal to the fraction the numerator of which is the number of Parking Spaces and the denominator of which is the total number of parking spaces on the Brownstone Parcel for which Shared Costs are incurred (the **"Total Share"**). Except as otherwise provided herein, all expenses incurred which are reasonably necessary to keep and operate the Parking Facilities as first rate parking facilities in a mixed use development similar to other first rate parking facilities in mixed use developments in downtown Tempe (including other parking facilities in the Development) shall be considered Shared Costs. Shared Costs may include a fee payable to Brownstone, or its successor, on account of management and administrative services to be rendered by Brownstone in connection with the oversight required in connection with the management of the Parking Spaces and Parking Facilities (including all oversight of the company engaged to operate and manage the Parking Facilities); such fee not to exceed an amount equal to 10% of all other Shared Costs. Any parking spaces on the Brownstone Parcel for which no Shared Costs are incurred shall not be included in determining the denominator in the formula referenced in preceding sentence. Unless and until Brownstone is otherwise advised in writing by the City and CPLP (or its assignees), CPLP shall be responsible only for those Shared Costs attributable to the CPLP Spaces (the "**CPLP Share**") and the City shall be responsible only for those Shared Costs attributable to the City Spaces (the "**City Share**"); accordingly, initially, because there will be 165 CPLP Spaces, CPLP shall be responsible only

for 165/340 of the Total Share and because there will be 175 City Spaces, the City shall be responsible only for 175/340 of the Total Share.

b. Notwithstanding anything to the contrary contained in the foregoing, once the operating and maintenance costs relating to the Existing Spaces become Shared Costs as described in Paragraph 3(i) above, then other than with respect to non-controllable costs incurred by Brownstone in connection with taxes, insurance and utilities), neither the City nor CPLP shall be responsible to pay any Shared Costs pertaining to the Existing Spaces or the Temporary Spaces for the year 2001 to the extent such costs exceed 105% of the costs incurred by CPLP in connection with the operation, management, cleaning, maintenance and repair of the Existing Spaces for the calendar year 2000; however, such limit on costs shall be increased annually at the rate of five percent (5%) per year commencing with the expenses for 2002 (i.e., the 2002 expenses for controllable costs may not exceed 105% of the 2001 costs as limited as described above).

c. Brownstone will compute the Shared Costs on a monthly basis and invoice CPLP and the City on a monthly basis for their respective share thereof with respect to the prior calendar month. CPLP shall pay the CPLP Share (reduced by CPLP's share of any gross revenue generated from daily fee parking and CPLP's share of net revenue from special event parking all as described in Paragraph 8 below) within thirty (30) days after CPLP receives such invoice from Brownstone. If CPLP's share of any gross revenue generated from daily fee parking and CPLP's share of net revenue from special event parking all as described in Paragraph 8 below for the month exceeds the CPLP Share for that month, Brownstone shall pay such net revenue amount to CPLP and provide an invoice showing the calculation of the revenues and expense within thirty (30) days following that month. City shall pay the City Share (reduced by City's share of any gross revenue generated from daily fee parking and City's share of net revenue from special event parking all as described in Paragraph 8 below) within thirty (30) days after City receives such invoice from Brownstone. If City's share of net revenue from special event parking all as described in Paragraph 8 below for the month exceeds the City Share for that month, Brownstone shall retain such net revenues and provide an invoice showing the calculation of the revenues and expense within thirty (30) days following that month. Any net revenue retained shall be applied to the next month's City Share to the extent the City Share is not otherwise offset by current revenues. Within thirty (30) days following the end of each calendar year, any net revenues allocated to the City for that calendar year and not applied to offset the City Share that calendar year shall be disbursed to CPLP and thereafter equitably allocated between the City and CPLP. City acknowledges that it has agreed to participate in parking revenues from daily fee parking and special event parking to reduce its share of expenses and not with the intent to retain all of the profit therefrom. If any sums due one party to the other are not paid within such thirty (30) day period, the amount thereof shall bear interest at the Default Rate commencing with the original due date thereof until paid. Upon request by either CPLP or the City, Brownstone shall provide to the requesting party all underlying receipts and other materials establishing and evidencing the Shared Costs and daily fee revenues as well as all extra cost and revenues resulting from special event parking as referenced in Paragraph 8 below. The City and CPLP shall each be entitled to independently or jointly audit or have its or their independent accountants audit such records for any calendar year within twelve months following the end of such calendar year. If any audit performed for CPLP reveals aggregate errors that resulted in an overpayment of the CPLP Share (reduced by CPLP's share of any gross

revenue generated from daily fee parking and CPLP's share of net revenue from special event parking all as described in Paragraph 8 below) of more than three percent (3%), Brownstone will pay all costs of the audit. In all other circumstances, CPLP will be responsible for all costs of the audit it performs. If any audit performed for City reveals aggregate errors that resulted in an overpayment of the City Share (reduced by City's share of any gross revenue generated from daily fee parking and City's share of net revenue from special event parking all as described in Paragraph 8 below) of more than three percent (3%), Brownstone will pay all costs of the audit. In all other circumstances, City will be responsible for all costs of the audit it performs. In any event, the Shared Costs for any calendar year will be adjusted to reflect the results of any audit, unless Brownstone contests the results of the audit in which event the matter will be resolved through arbitration as provided below.

d. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Shared Costs include any of the following: (i) any costs incurred in connection with or directly related to the original construction or voluntary modification, redevelopment or remodeling (as distinguished from normal maintenance, repair and replacement) of any Parking Facilities and any other improvements on the Brownstone Parcel; (ii) principal and/or interest payments on any financing for the Brownstone Parcel or any portion thereof or rental under any ground lease or other underlying lease relating to the Parking Facilities and/or Parking Spaces; (iii) capital expenditures (i.e., expenditures which, in accordance with generally accepted accounting principles consistently applied or federal income tax regulations, are not fully chargeable to a current account in the year the expenditures are incurred) other than those incurred to replace New Spaces and Parking Facilities required to be replaced for reasons other than voluntary modification, redevelopment or remodeling (e.g., as a result of damage, destruction or changes required to be made to comply with laws); (iv) the cost of correcting defects in or inadequacies of the initial design or construction of any improvements on the Brownstone Parcel, or repair and/or replacement of any of the original materials or equipment required as a result of such defects or inadequacies; (v) any expense resulting from the gross negligence of Brownstone, its agents, servants, contractors or employees, or any expense in excess of $10,000 per occurrence resulting from the mere negligence of Brownstone, its agents, servants, contractors or employees, or any expense incurred to repair any damage or destruction caused in whole in or part through the act of Brownstone or any tenants or residents of any improvements on the Brownstone Parcel, or their respective designees, permitees, licensees and invitees (whether or not such act is negligent or otherwise culpable); (vi) costs for operating, managing, cleaning, maintenance, repair and replacement of a portion of a Parking Facility (as opposed to the entire Parking Facility) and the applicable portion thereof does not include any Parking Spaces; (vii) expenses in connection with the services or other benefits of a type which are not provided to the Parking Spaces but which are provided to other spaces on the Brownstone Property, including, without limitation, cost associated with any gates or other security devises used; (viii) any interest or penalties incurred as a result of any failure to pay any bill as the same shall become due and costs, fines, or fees incurred due to knowing violations of any federal, state or local law, statutes or ordinances, or any rule, regulation, judgment or decree of any governmental authority; (ix) any and all costs associated with the operation of the business of the entity which constitutes Brownstone or any affiliate thereof or any affiliate of any member of Brownstone, intending by this exclusion to distinguish the costs of operation of the Parking Spaces and Parking Facilities; (x) salaries and bonuses of officers and executives of Brownstone and compensation paid to employees of Brownstone not directly attributable to services rendered

solely in connection with operation and maintenance of the Parking Facilities and any administrative costs of Brownstone not directly attributable to services rendered solely in connection with operation and maintenance of the Parking Facilities; (xi) any costs representing an amount paid to a person, firm, corporation or other entity related to Brownstone which is in excess of the amount which would have been paid in the absence of such relationship; (xii) Brownstone's general overhead; (xiii) the cost of the initial stock of tools and equipment for the operation, repair and maintenance of the Parking Facilities; (xiv) prepayments (including prepayments of taxes) when such payments may be and are customarily paid in installments; and (xv) any other cost or expense which is not properly considered an expense of operating, maintaining, managing or repairing the Parking Spaces or Parking Facilities in accordance with generally accepted accounting principles consistently applied.

7. Security. Brownstone shall install (and thereafter operate, maintain, repair and replace) a Primary Gate System for any Garage within which any of the Parking Spaces are located, and the costs of such operation, maintenance, repair and replacement shall be Shared Costs. The Primary Gate System shall be sufficient to provide all information needed to implement the revenue sharing arrangement described in Paragraph 8 below and to at all times be programmed to facilitate the controlled access to the Garage by Authorized Users as contemplated by the provisions of Exhibit "H" attached hereto. Except as provided in the preceding sentence, CPLP shall be solely responsible for installing, maintaining, repairing and replacing such additional security facilities and services as it deems appropriate with respect to the CPLP Spaces, City shall be solely responsible for installing, maintaining, repairing and replacing such additional security facilities and services as it deems appropriate with respect to the City Spaces, and Brownstone shall be solely responsible for installing, maintaining, repairing and replacing such additional security facilities and services as it deems appropriate with respect to all Brownstone Spaces, provided that the costs of such facilities and services will not be Shared Costs, and provided, further, that such facilities and services shall not at any time interfere with the exercise of the easement rights granted under Paragraph 2 above or Brownstone's use of the remainder of the Garage. The Primary Gate System, once installed, will not be modified without the prior approval of the parties whose easement rights are affected by Primary Gate System, which shall not be unreasonably conditioned, withheld or delayed.

8. Revenue.

a. Except as described below, CPLP and the City will be entitled to any and all revenue resulting from the use, occupancy or lease of the Parking Spaces (including without limitation revenue from tenant parking and public/temporary visitor parking). Brownstone shall be entitled to any and all such revenue relating to all Brownstone Spaces. All revenue generated from day-to-day operations of the Parking Facilities (as opposed to revenues from special events) shall be shared proportionately between Brownstone, City and CPLP as provided below. All charges for Excess Validations (as described in Exhibit "D" attached hereto) shall be considered revenue generated from day-to-day operations of the Parking Facilities. Each party's share of daily non-special event revenues shall be evaluated on a consistent basis periodically each day (with the time periods and frequency to be mutually approved by the parties) and determined based on the number of Public Parking Spaces available during each period of evaluation with the intent that each party participates only in its equitable share of revenues for each period based on the number of Public Parking Spaces it makes available during each period. CPLP's share of

daily non-special event revenues during any period shall be equal to the product of the gross daily non-special event revenues for that period multiplied by a fraction, the numerator of which is the total number of CPLP Spaces which are available as Public Parking Spaces during that period and the denominator of which is the total number of Public Parking Spaces available in the Parking Facility during that period. City's share of daily non-special event revenues during any period shall be equal to the product of the gross daily non-special event revenues for that period multiplied by a fraction, the numerator of which is the total number of City Spaces which are available as Public Parking Spaces during that period and the denominator of which is the total number of Public Parking Spaces available in the Parking Facility during that period. Brownstone's share of daily non-special event revenues during any period shall be equal to the product of the gross daily non-special event revenues for that period multiplied by a fraction, the numerator of which is the total number of Brownstone Spaces which are available as Public Parking Spaces during that period and the denominator of which is the total number of Public Parking Spaces available in the Parking Facility during that period.

b. Notwithstanding anything to the contrary contained herein, each party will jointly make its spaces in the Garage available for special event parking (other than those spaces that are exclusive reserved spaces and any other spaces controlled by Brownstone, City or CPLP which are to be reserved for such event for use by Brownstone, City or CPLP, or their respective Authorized Users, as applicable). All net revenue from special event parking (i.e., the amount by which parking fees collected on account of spaces made available for the special event exceeds any and all extra costs incurred as a result of administering and making such spaces available for the special event) shall be shared between Brownstone, City and CPLP as provided below. All net costs of special event parking (i.e., the amount by which any and all extra costs incurred as a result of administering and making spaces available for the special event exceed the parking fees collected on account of spaces made available for the special event) shall be shared between Brownstone, City and CPLP as provided below. Net expenses incurred as a result of a special event or net revenues from a special event shall be allocated to CPLP in proportion to a fraction the numerator of which is the total number of CPLP Spaces made available as Public Parking Spaces for the special event and the denominator being the total number of all Public Parking Spaces made available for the special event. Net expenses incurred as a result of a special event or net revenues from a special event shall be allocated to City in proportion to a fraction the numerator of which is the total number of City Spaces made available as Public Parking Spaces for the special event and the denominator being the total number of all Public Parking Spaces made available for the special event. Net expenses incurred as a result of a special event or net revenues from a special event shall be allocated to Brownstone in proportion to a fraction the numerator of which is the total number of Brownstone Spaces made available as Public Parking Spaces for the special event and the denominator being the total number of all Public Parking Spaces made available for the special event. Any net revenues collected by Brownstone and allocable and payable to CPLP may be offset against sums owing by CPLP to Brownstone under this Agreement. Any net revenues collected by Brownstone and allocable and payable to City may be offset against sums owing by City to Brownstone under this Agreement. Net expenses incurred for a special event will be accounted for separately and will not be Shared Costs, except if and to the extent the parties otherwise agree in specific situations. City and CPLP will each reimburse Brownstone its respective proportionate share of all net expenses, if any, paid by Brownstone (other than to the extent the parties agree such expenses are to be Shared Costs) in

connection with a special event within thirty (30) days following receipt of written demand therefor together with a full accounting of all expenses and revenues for such special event.

9. Rules and Regulations. CPLP and City shall follow and adhere to, and shall cooperate with Brownstone in directing the Authorized Users to follow and adhere to, all reasonable rules and regulations pertaining to traffic control, safety, deposits and charges for access cards and other management issues that are imposed by Brownstone from time to time and delivered to City and CPLP in writing; provided that Brownstone shall give CPLP and City at least thirty (30) days advance notice of the adoption or modification of any such rules or regulations and provided that the same are enforced in a non-discriminatory fashion against all persons entering upon the Brownstone Parcel. In addition to the foregoing, Brownstone, with the prior written consent of the other parties to this Agreement, may establish reasonable rules or guidelines concerning the validation program in an effort to avoid abuse, including, without limitation, establishing a suggested minimum purchase from a merchant to become eligible to receive parking validation; provided, however, any such rules or guidelines shall not be applicable to any operator of a movie theater described in Exhibit "D" attached hereto. Brownstone has no liability or responsibility to prevent persons other than Authorized Users from using the Parking Spaces, and neither City nor CPLP has any liability or responsibility to prevent Authorized Users from using parking spaces in the Brownstone Parcel other than the Parking Spaces, but Brownstone agrees to refrain from affirmatively encouraging or allowing persons other than Authorized Users to use the Parking Spaces (except as may be expressly permitted under this Agreement) and CPLP and the City agree to refrain from affirmatively encouraging or allowing Authorized Users to use parking spaces in the Brownstone Parcel other than the Parking Spaces.

10. Assignment.

a. Without limiting the ability of CPLP to authorize Authorized Users of CPLP to exercise the easement rights granted under Paragraph 2 above, all or any of CPLP's easements and rights and obligations under this Agreement may be assigned from time to time to CPT, the City and/or any successor-in-title to any of the Centerpoint Parcels, which assignment shall be evidenced by a written, recorded assignment and assumption (a copy of which shall be delivered to Brownstone); expressly provided, however, that CPLP or its successor may divide the easement rights (and corresponding obligations) between two (2) (and only 2) portions of the Centerpoint Parcels by an assignment and any attempt to divide such easement rights and obligations into a greater number shall be void. Nothing contained in the foregoing shall preclude CPLP, or an assignee or successor of CPLP, from assigning all of its respective rights and obligations under this Agreement to a property owners association whose members are owners or ground lessees of any portion of the land comprising the Centerpoint Parcels (a "**Parking Association**"). Without limiting the ability of City to authorize Authorized Users of City to exercise the easement rights granted under Paragraph 2 above, City shall have no right to assign its rights hereunder other than to CPLP, CPT or any successor in title to all of any portion of the Centerpoint Parcels, or to the Parking Association.

b. Effective immediately upon the delivery to Brownstone of a recorded assignment and assumption as provided above, the assignor shall be released from all future or prospective liabilities, responsibilities and obligations hereunder with respect to the rights and

obligations assigned to the assignee, and the assignee shall be deemed conclusively to have assumed all such future and prospective liabilities, responsibilities and obligations relating to the easements and rights assigned. No such assignment shall release the assignor from pre-existing or accrued liabilities or obligations, and the assignee shall be deemed to have assumed all pre-existing or accrued liabilities or obligations unless otherwise agreed to in writing by Brownstone.

c. If any rights or obligations of CPLP, or a successor or assign of CPLP, is hereafter assigned to a Parking Association, then: (i) the Parking Association (but not its members in their capacity as members of the Parking Association) would become a party to this Agreement; (ii) except as otherwise provided below, all rights and obligations assigned to the Parking Association would only be enforceable by and against the Parking Association and not the individual members of the Parking Association, and (iii) the Parking Association shall advise Brownstone in writing of the names and contact address of each member of the Parking Association and identify the number of Parking Spaces and corresponding portion of the Shared Costs allocated to each such member under the Parking Association's governing documents. The Parking Association shall at all times keep Brownstone advised in writing of any changes to the names, contact address, and allocation of number of Parking Spaces (and Shared Costs) of each member of the Parking Association. Brownstone shall deliver a single invoice to the Parking Association for the Shared Costs allocable to all Parking Spaces controlled by the Parking Association. The Parking Association shall then allocate the invoice to its members based on the corresponding portion of the Shared Costs allocated to each member under the Parking Association's governing documents. The Parking Association shall have no liability for payment of any Shared Costs or other sums, but the governing documents of the Parking Association shall create a personal obligation of each member of the Parking Association to pay all Shared Costs or other sums due with respect to the Parking Spaces allocated to that member under the Parking Association's governing documents and to comply with all rules and regulations adopted under this Agreement relating to the Parking Spaces allocated to that member under the Parking Association's governing documents, and all such obligations shall be enforceable by the Parking Association, the other members of the Parking Association and Brownstone.

d. If the Parking Association on behalf of it members (or any member of the Parking Association) fails to timely pay any sum or perform any obligation required of it under this Agreement or fails to comply with the applicable rules and regulation adopted hereunder, Brownstone may exercise all remedies available under this Agreement or at law or in equity to enforce payment or performance (including terminating the easement right of the Association allocable to the defaulting member subject to the limitations set forth in Paragraph 12(b) below); provided the required notices of default are delivered to the Parking Association and that the Parking Association and its members are provided the required opportunities to cure such failure all as provided and in accordance with the provisions of Paragraph 12 below. The Parking Association may, but shall not be obligated, to cure any breach or default by one of its members.

e. Notwithstanding anything to the contrary contained in this Agreement, Brownstone shall not have any right to deny, disturb or interfere with access to or utilization of any Parking Spaces allocated to any member of the Parking Association (or any Authorized User of such member), nor pursue a claim for unpaid Shared Costs or any other costs directly against the Parking Association, as a result of the acts or omissions of other members of the Parking

Association, including, without limitation, non-payment of any Shared Costs allocable to any other member. Nothing contained in this Agreement shall preclude or limit the ability of Brownstone from exercising remedies against the defaulting member(s) of the Parking Association.

11. Sale by Brownstone; Assignment to Association.

a. Nothing contained in this Agreement shall preclude Brownstone from freely selling, transferring, or conveying (i) all of the Brownstone Parcel or (ii) the portion thereof subject to the easements under Paragraph 2 above (as such portion may be modified as contemplated by Paragraphs 3(f) and 3(g) above, including such property's interest in Common Elements and/or Limited Common Elements of any Condominium to the extent the same are subject to such easements); provided that such sale or assignment is of all (and not a portion) of Brownstone's rights and obligations under this Agreement. Effective immediately upon the delivery to CPLP and the City of a copy of a recorded deed therefor, the grantor shall be released from all future or prospective liabilities, responsibilities and obligations hereunder, and the grantee, without necessity for a specific assumption instrument, shall be deemed conclusively to have assumed all future and prospective liabilities, responsibilities and obligations hereunder. The grantor will not be released from any pre-existing or accrued liabilities, responsibilities or obligations hereunder, and the grantee shall also be deemed to have assumed all pre-existing or accrued liabilities or obligations unless otherwise agreed to in writing by City and CPLP. Brownstone, nor any assignee or transferee of Brownstone, may assign or transfer less than all of its rights and obligations under this Agreement, and any attempt to divide such rights and obligations shall be void.

b. In addition, to the extent that a Condominium Association under the Condominium has jurisdiction over the Parking Facilities or the portions thereof subject to the easements set forth in Paragraph 2 above, Brownstone may assign its rights and obligations under this Agreement to the Association, which assignment shall be evidenced by a written, recorded assignment and assumption (a copy of which shall be delivered to CPLP and the City). Effective immediately upon delivery to CPLP and the City of a recorded assignment and assumption as provided above, the assignor shall be released from all future or prospective liabilities, responsibilities and obligations hereunder and the Condominium Association shall be deemed conclusively to have assumed all future and prospective liabilities, responsibilities and obligations. No such assignment shall release the assignor from pre-existing or accrued liabilities or obligations, and the assignee Condominium Association shall be deemed to assume all pre-existing or accrued liabilities or obligations unless otherwise agreed to in writing by City and CPLP.

12. Enforcement.

a. If any party fails to timely pay any sum or perform any obligation required under this Agreement, and fails to cure any such breach within thirty (30) days after receipt of written demand therefor, the party to whom such payment or performance is due, upon an additional thirty (30) days advance written notice, shall have the right if such default has not been cured at the expiration of the second 30 day period, to exercise all remedies available under this Agreement or at law or in equity, including without limitation, specific performance (but

excluding termination of the easements and rights hereunder), which remedies shall be enforced through arbitration or legal action if arbitration is not applicable as provided below; provided, however, if such non-monetary breach is not reasonably capable of being cured within sixty (60) days, then, the breaching party shall be in default only if it fails to commence the cure within thirty (30) days following receipt of the first notice of the breach and thereafter fails to diligently pursue completion of the cure within a reasonable period time.

b. Before terminating any of the easements set forth in Paragraph 2 above, Brownstone shall, not earlier than the expiration of the second thirty (30) day period set forth above, provide a third written notice to both CPLP and the City, and if the default is not cured within fifteen (15) days after Brownstone gives such third notice, then Brownstone may, in addition to the exercise of all of its other rights and remedies, terminate the defaulting party's easements and other rights under this Agreement. Notwithstanding the foregoing, in the event of a monetary default that is not timely cured, no easement rights may be terminated as a result of such monetary default unless the monetary default that has not been cured is failure to pay at least a total of three (3) months of Shared Costs (i.e., if either the City or CPLP is in default of its obligation to pay one or two months of Shared Costs, Brownstone may not terminate any of the easements set forth in Paragraph 2 above).

c. Notwithstanding anything to the contrary contained in this Agreement, no breach or default by CPLP shall affect the rights and easements of the City under this Agreement, and no breach or default by City shall affect the rights and easements of the CPLP under this Agreement. Similarly, no breach or default by a member of a Parking Association (including, without limitation, failure of such member to pay its share of Shared Costs) shall affect the other parking rights held by such Parking Association under this Agreement or the rights of the Parking Association's other members thereto under the Parking Association's governing documents.

d. After delivery of the second notice and expiration of the applicable time to cure, any non-breaching party shall be entitled, after notice to the breaching party and all other parties, to proceed with all actions reasonably necessary to perform the breached obligation on behalf of the breaching party and to recover from the breaching party all costs incurred in such performance, together with interest on all such sums at the Default Rate, from the date such costs are incurred through the date on which all such costs and interest are paid in full.

e. If the City, without any obligation to do so, cures CPLP's breach and provides written notice thereof to CPLP, then CPLP shall repay to the City all costs incurred by the City to cure such breach, together with interest on all such sums at the Default Rate, from the date such costs are incurred, within thirty (30) days following delivery of the notice from the City advising CPLP that the City has cured CPLP's breach.

f. If CPLP, without any obligation to do so, cures City's breach and provides written notice thereof to City, then City shall repay to CPLP all costs incurred by CPLP to cure such breach, together with interest on all such sums at the Default Rate, from the date such costs are incurred, within thirty (30) days following delivery of the notice from CPLP advising the City that CPLP has cured City's breach. If City fails to repay CPLP within such thirty (30) day period, and such failure remains uncured for another thirty (30) days after delivery of a second

notice by CPLP to the City and Brownstone (which second notice must conspicuously indicate in bold type on the top of the first page of the notice that failure to cure the breach described in the second notice within thirty (30) days from the date of City's receipt of the second notice will result in the loss of all easement rights to the City Parking Spaces) then all City Spaces shall after the expiration of such 30 day period automatically become CPLP Spaces and CPLP shall thereafter be deemed to automatically have been assigned and assumed all of City's rights and obligations under this Agreement, and City shall thereafter shall have no rights or obligations under this Agreement.

g. From time to time, CPLP may offset against any amounts owing by CPLP to Brownstone under this Agreement any and all amounts payable by Brownstone to CPLP. From time to time, City may offset against any amounts owing by City to Brownstone under this Agreement any and all amounts payable by Brownstone to City. Notwithstanding the foregoing, however, neither CPLP nor the City may offset any amounts owing by Brownstone unless to the extent such amounts have been determined as owing by Brownstone to CPLP or the City, as applicable, as part of a final arbitration award determined in accordance with the arbitration procedures described in Paragraph 16 below, or as a final judgment issued by a court of competent jurisdiction.

h. If Brownstone ever receives conflicting demands from City and CPLP (or any assignee of CPLP), or from a Parking Association and any of its members, concerning their respective rights and obligations under this Agreement, Brownstone may require any conflict to be resolved through arbitration to the extent applicable pursuant to the provisions of Paragraph 16 below, or if arbitration is not available because the amount in controversy exceeds or reasonably may exceed $200,000, to commence an interpleader action naming all parties to the dispute seeking a declaration of rights and obligations from a court of competent jurisdiction. All parties to any such dispute shall indemnify and hold harmless Brownstone against all costs, damages, attorneys' fees, expenses and liabilities which it may incur or sustain in connection with any such arbitration or interpleader action (except to the extent incurred as a result of any wrongful acts or negligence on the part of Brownstone) and will pay such costs upon demand.

13. Estoppel Certificate. Upon request by any party hereto, the other parties will, within twenty (20) days after receipt of the request, execute an estoppel certificate confirming those matters which may be reasonably requested by the requesting party, including but not limited to, confirmation that this Agreement is in full force and effect and has not been modified (or stating the modifications that have occurred), and that no party is, to the knowledge of the certifying party, in default with respect to this Agreement or any of the obligations created hereunder, and that no party would be in default after notice and/or an opportunity to cure (or specifying those matters that the certifying party believes constitute a breach or default or that would constitute a breach or default after notice and/or an opportunity to cure). If a party from whom a certificate is requested fails to provide the certificate within the required time period, such party shall be estopped to deny the truth and accuracy of the matters set forth in the form of estoppel certificate submitted by the requesting party. In addition, the party failing to provide an estoppel certificate, or a party setting forth false information in an estoppel certificate, shall be fully liable for all damages resulting therefrom to the requesting party.

14. Parking Obligations of City. City previously agreed to provide certain parking rights to third parties within or on the Brownstone Parcel, including in some instances the grant of an option to purchase a permanent easement for spaces, as described on the attached Exhibit "E" which is incorporated herein by this reference (the **"City Parking Obligations"**). Brownstone has acquired the Brownstone Parcel subject to the City Parking Obligations but is not assuming any obligations thereunder, including any obligation to recognize any right of any third party to purchase a permanent easement for spaces on the Brownstone Parcel. It shall be City's sole obligation, at its sole cost and expense, to satisfy the City Parking Obligations through use of the City Spaces or otherwise. Without limiting the foregoing, Brownstone shall have no obligation to provide any additional spaces, or to grant any additional easements for the purpose of satisfying the City Parking Obligation. The parties agree that City shall be obligated to utilize the total number of City Spaces which are needed to satisfy the City Parking Obligations (as the same may be reduced from time to time) to provide parking spaces for various properties located in the vicinity of the Brownstone Parcel only for such purposes unless and until the persons or entities for whom those obligations exist execute such documents or instruments as may be reasonably necessary to enable Brownstone to obtain title insurance from a title insurance company licensed to do business in Arizona insuring that title to the Brownstone Parcel is not subject to the rights of such third parties (other than to the extent such rights arise through such parties being Authorized Users). Brownstone shall indemnify, defend and hold City harmless for, from and against all claims and liabilities (including reasonable attorneys' fees, costs and expenses) arising out of the failure to continually provide the City Spaces, as needed by City to comply with the City Parking Obligations, subject to Force Majeure (as defined in Paragraph 18 below). City shall indemnify, defend and hold Brownstone and CPLP, and all successive owners of the Brownstone Parcel and Centerpoint Parcels harmless for, from and against all claims and liabilities (including reasonable attorneys' fees, costs and expenses) arising out of any claims, causes of action, liabilities, or controversies relating to the City Parking Obligations, any alleged violations thereof, any attempted exercise of any option to purchase an easement on the Brownstone Parcel or the Centerpoint Parcels and any other matters whatsoever related to the City Parking Obligations except only those due to the default or nonperformance by Brownstone of its obligations to provide the City Spaces as required by this Agreement, subject to Force Majeure (as defined in Paragraph 18 below).

15. CPLP or City Approval. Wherever in this Easement the approval, consent or agreement of either CPLP or the City is required for any matter, CPLP and the City agree to not unreasonably withhold, delay or condition such approval, consent or agreement and such approval, consent or agreement shall be deemed given by the party from whom it is requested unless that party reasonably objects in writing, noting in reasonable detail the specific reasons for objection, and delivers the same to Brownstone within twenty (20) days after that party's receipt or deemed receipt of the request for approval, consent or agreement. If the parties disagree or cannot resolve a disagreement relating to any matter for which an approval, consent or agreement is requested, the same shall be subject to arbitration under Paragraph 16 below.

16. Arbitration.

a. Any controversy or claim arising out of or relating to any provision of this Agreement involving only the rights and obligations of CPLP and/or Brownstone, and any breach of those provisions relating to obligations of Brownstone to CPLP or vice versa, shall be

settled by arbitration in Maricopa County, Arizona in accordance with the Rules of the American Arbitration Association in effect at the time a demand for arbitration is filed with such Association, or such other rules mutually approved by CPLP and Brownstone prior to the occurrence of the controversy, provided that either CPLP or Brownstone may, in its sole discretion, give notice of its election to not utilize arbitration if the amount in controversy exceeds or reasonably may exceed $200,000, whereupon no arbitration shall occur and the parties will have all rights and remedies available at law or in equity in the courts. Such election shall be made before the electing party picks an arbitrator as provided below, and if the party picks an arbitrator, it shall have no right to not participate in and be bound by the arbitration proceeding.

b. If arbitration is to be utilized, there shall be (3) arbitrators chosen from a pool consisting solely of attorneys authorized to practice law in the State of Arizona as follows: the party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and name one arbitrator in such notice. Within five (5) business days after the receipt of such notice, the other party shall name a second arbitrator and in case of failure to do so, the arbitrator named by the first party shall be the sole arbitrator. The two arbitrators so appointed shall select and appoint a third arbitrator, and if the two arbitrators so appointed fail to appoint the third arbitrator within five (5) business days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by a judge of the Superior Court of Maricopa County, Arizona, and the arbitrators so appointed shall thereupon proceed to determine the matter in dispute, difference or in question. Immediately following appointment, the arbitrators shall provide written notice to the parties indicating the time and location of the scheduled hearing. The hearing must be held within thirty (30) calendar days following the date upon which the arbitrators were appointed. If a party alleges the existence of an emergency, the first hearing before the arbitrators shall occur within ten (10) days of the naming of the third arbitrator, with such additional proceedings and actions as the arbitrators may then specify to accommodate a bona fide emergency. Any decision of the arbitrators must be made consistent with the laws and court decisions of the highest court of the State of Arizona, if the highest court has rendered a decision, and otherwise, in accordance with the decisions of the Appellate Courts. The decision in writing of the majority of the arbitrators shall be final and conclusive and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction. The arbitrators shall have power to award to any party or parties to such proceedings such sums for costs, expenses and attorney's fees as such arbitrators may deem proper.

c. Notwithstanding anything to the contrary contained herein, the City shall not be obligated, nor have the right, to participate as a party to any arbitration proceeding; accordingly any controversy relating to the City's rights or obligations, or claim by or against the City, shall not be subject to the requirement that it be settled through arbitration, and if such claim or controversy can not be voluntarily resolved, the parties shall have all rights and remedies available at law or in equity to resolve any such claim or controversy.

17. Notices. All notices or other communications required or provided to be sent by either party shall be in writing and shall be sent (i) by United States Postal Service; postage prepaid, certified, return receipt requested; or (ii) by any nationally known overnight delivery service; or (iii) by courier; or (iv) by facsimile transmission; or (v) in person. All notices shall be

deemed to have been given forty-eight (48) hours following deposit in the United States Postal Service or upon receipt if sent by overnight delivery service, courier, facsimile transmission, or personally delivered. Notwithstanding the foregoing, if a notice is given by facsimile transmission and the date of such transmission is not a business day or if such transmission is made after 5:00 pm on a business day, then such notice shall be deemed to be given on the first business day following such transmission. All notices shall be addressed to the party at the address below.

If to CPLP:	Centerpoint Plaza Limited Partnership 7600 East Doubletree Ranch Road, Suite 300 Scottsdale, Arizona 85258-2137 Attn: Michael A. DeBell Phone No. (480) 367-7244 Fax No. (480) 367-7444
With a copy to:	Neil D. Biskind, Esq. Biskind, Hunt & Taylor, P.L.C. 11201 North Tatum Blvd, Suite 330 Phoenix, Arizona 85028 Phone No. (602) 955-1822 Fax No. (602) 955-2272
If to Brownstone:	Brownstone 6th & Maple, L.L.C. 602 West First Street Tempe, Arizona 85281-2606 Attn: Cortlandt P. Houchard Phone No. (480) 966-9600 Fax No. (480) 966-4100
With a copy to:	David W. Kreutzberg, Esq. Squire Sanders & Dempsey L.L.P. 40 North Central Avenue, Suite 2700 Phoenix, Arizona 85004-4440 Phone No. (602) 528-4062 Fax No. (602) 253-8129
If to City:	City of Tempe 31 East 5th Street Tempe, Arizona 85281-2606 Attn: Development Services Manager Phone No. 480-350-8530 Fax No. 480-350-8872
With a copy to:	City Attorney 140 East 5th Street Tempe, Arizona 85281-2606

Phone No. 480-350-8227
Fax No. 480-350-8645

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this paragraph. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

18. Force Majeure. The parties' respective obligations hereunder, expressly excluding any payment obligations, are subject to extension of the time for performance by the reasonable delays caused by or resulting from casualty, unusual inclement weather, unusual governmental delays, strikes, labor disturbances, unusual materials unavailability or shortages, events of God, and other events beyond the reasonable control of the party whose performance is in question, excluding financial difficulty or inability ("**Force Majeure**").

19. General. This Agreement is being entered into in the State of Arizona and shall be governed by the laws of the State of Arizona. If any party retains an attorney or commences any action or arbitration proceeding to enforce this Agreement or obtain remedies for its violation, the prevailing or non-defaulting party shall be entitled to recover from the losing party all costs and reasonable attorneys' fees incurred in connection therewith and the same shall be included in the arbitration award and/or judgment. Time is of the essence of this Agreement. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto. In this Agreement, the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "person" and "party" include corporation, partnership, limited liability company, individual, firm, trust, or association wherever the context so requires. The captions of the paragraphs of this Agreement are for convenience only and shall not govern or influence the interpretation hereof. When used herein, the terms "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to". It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership or joint venture relationship between City, CPLP and Brownstone. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, corporation or other entity not a party hereto (including, without limitation, any broker), and no such party shall have any right or cause of action hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any, subject to the limitations set forth in Paragraphs 10 and 11 above.

20. Amendments. This Agreement may be amended with the written consent of all parties; however, to the extent any amendment to this Agreement is applicable to and only affects some but not all parties and their respective rights and obligations hereunder, then any such amendment may be effectuated without the written consent of the part(ies) not affected. For example, to the extent the City and CPLP reallocate the number of Parking Spaces between them if and as permitted under this Agreement, an amendment to this Agreement executed only by the City and CPLP shall be effective to effectuate any such reallocation without the necessity

of obtaining the consent of Brownstone. Any amendment to this Agreement to become effective must be recorded in the official records of Maricopa County, Arizona.

21. Finalization Agreement. The Centerpoint Finalization and Completion Agreement (the "**Finalization Agreement**") was entered into between the City and CPLP on April 14, 2000, and recorded in the official records of Maricopa County, Arizona as Document Number 00-0288374. The Finalization Agreement provides, among other things, that the City may elect to purchase from CPLP the right to park in certain parking spaces upon the City's payment to CPLP of certain sums. By letter dated October 12, 2000, the City exercised its election to acquire rights to park in ten (10) parking spaces and the City tendered to CPLP all requisite sums therefor. The City acknowledges that the grant of rights with respect to the City Spaces set forth above satisfies CPLP's obligations regarding the sale of spaces contained in the Finalization Agreement.

22. Conflicts of Interest. No member, official or employee of the City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law. All parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statutes § 38-511.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first written above.

BROWNSTONE 6th & MAPLE, L.L.C., an Arizona limited liability company

By Brownstone Residential, L.L.C., an Arizona limited liability company
Its Manager

By MCW Holdings, L.L.C., an Arizona limited liability company
Its Manager

By: _____

Its: _____

CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership

By: UHB Plaza Limited Partnership, an Arizona limited partnership, General Partner

By: W.B.S.D. Associates, Inc., an Arizona corporation, General Partner

By: _____

Its: _____

CITY OF TEMPE, ARIZONA, an Arizona municipal corporation

By: _____

Name: _____

Its: Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM AND WITHIN THE POWERS OF THE CITY OF TEMPE:

_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of MCW HOLDINGS, L.L.C., an Arizona limited liability company, as Manager of Brownstone Residential, L.L.C., an Arizona limited liability company, as Manager of Brownstone 6th & Maple, L.L.C., an Arizona limited liability company.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of W.B.S.D. Associates, Inc., an Arizona corporation, in its capacity as general partner of UHB Limited Partnership, an Arizona limited partnership, in its capacity as general partner of CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by _____, the Mayor of CITY OF TEMPE, ARIZONA, an Arizona municipal corporation, for and on behalf thereof.

_____
Notary Public

My commission expires:

_____

EXHIBIT "A"

BROWNSTONE PARCEL

A parcel of land being a portion of Lots 7A and 7B of Centerpoint Plaza, as recorded in Book 544, page 27, Maricopa County Records (M.C.R.) and a portion of Lot 6 of Centerpoint, as recorded in Book 369, page 31, M.C.R. lying within Section 16, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northeast corner of Lot 7A of said Centerpoint Plaza;
THENCE along the north line of said Lot 7A, South 89E59'02" West, a distance of 35.00 feet, to the centerline of Maple Avenue (alignment) and the **POINT OF BEGINNING**;
THENCE leaving said north line, along said centerline, South 00E01'16" East, a distance of 387.50 feet;
THENCE leaving said centerline, South 89E58'44" West, a distance of 18.46 feet;
THENCE South 00E01'16" East, a distance of 95.62 feet, to the southerly line of said Lot 7A and the beginning of a non-tangent curve;
THENCE along said southerly line, southerly along said curve, having a radius of 20.00 feet, concave northwesterly, whose radius bears North 89E44'20" West, through a central angle of 44E44'09", a distance of 15.62 feet, to the curve's end;
THENCE continuing along said southerly line and the projection thereof through Lot 6 of said Centerpoint, back onto said southerly line, South 44E59'49" West, a distance of 238.96 feet, to the beginning of a curve;
THENCE southwesterly along said curve, having a radius of 45.00 feet, concave southeasterly through a central angle of 42E19'04", a distance of 33.24 feet, to a point of intersection with a non-tangent line;
THENCE South 80E59'49" West, a distance of 49.62 feet, to the southern most corner of said Lot 7A;
THENCE leaving said southerly line, along the westerly line of said Lot 7A, North 00E00'00" East, a distance of 135.38 feet;
THENCE North 30E33'15" West, a distance of 77.00 feet;
THENCE North 89E59'24" West, a distance of 87.00 feet;
THENCE North 00E00'36" East, a distance of 80.00 feet;
THENCE South 89E59'24" East, a distance of 17.78 feet, to the west line of the east 4.00 feet of Lot 7B of said Centerpoint Plaza;
THENCE leaving said westerly line, along said west line, North 00E00'36" East, a distance of 422.00 feet, to the southerly right-of-way line of 5th Street as shown on said Centerpoint Plaza;

THENCE leaving said west line, along said southerly right-of-way line, South 89E59'24" East, a distance of 363.51 feet, to the **POINT OF BEGINNING**.

(Revised 3/2/01)

EXHIBIT "B"

CPLP and CPT PARCELS

EXHIBIT "C"

Description of New Spaces

1. All New Spaces shall be a minimum of 8 feet 6 inches wide, 18 feet long and 7 feet high, and all accessible spaces shall meet the requirements of ANSI and all other applicable building, fire, safety and other codes, ordinances, regulations and laws of the City or any other governmental entity or agency having jurisdiction over the Parking Facilities.

2. The New Spaces shall have no greater percentage of accessible spaces than otherwise provided throughout the remainder of the Garage.

3. Access to the New Spaces shall be provided via one or more gated entrances(s).

4. All New Spaces shall be provided in a continuous block of spaces uninterrupted by other parking spaces, shall be located in the Garage, and, to the extent feasible, shall be located on the first level below grade. Brownstone may not modify the New Spaces or relocate the New Spaces in the Garage without the prior written consent of CPLP as contemplated by Paragraph 15 of the Agreement to which this Exhibit is attached.

5. Elevator service shall be provided to the grade level of the Garage.

6. Lighting within the Garage shall be provided to meet an average maintained lighting level of 6 foot candles throughout with a minimum level of 1.5 foot candles.

EXHIBIT "D"

Parking Facility Operating Requirements.

1. Subject to events beyond the reasonable control of the parking operator, access to and/or from the Parking Facilities shall at all time be limited by a controlled gate system. Authorized Users shall be provided access cards or other means to gain entry and exit to and from the Parking Facilities. The gate system must be capable of efficiently facilitating the controlled access to the Garage by Authorized Users as contemplated by the provisions of Exhibit "H" below.

2. Other than in connection with special events and use of the Parking Facilities by Authorized Users, utilization of the Parking Facilities shall be subject to a charge established consistent with, or at an amount lower than, the parking rates then being charged by other similarly situated parking facilities in downtown Tempe.

3. The gated access system shall provide tickets for each vehicle that does not belong to an Authorized User entering the Parking Facilities, and such tickets shall be capable of verifying the date and time that the vehicle entered the Parking Facilities.

4. A validation program shall be established and maintained. The validation program shall provide a method for distinguishing validations provided by merchants/tenants of the Brownstone Parcel from validations provided by merchants/tenants of each of the Centerpoint Parcels and from those provided by the movie theater operator on the Centerpoint Parcels. The validation program shall contemplate that merchants/tenants within the Brownstone Parcel and the Centerpoint Parcels shall be entitled to validate any parking ticket for the Parking Facility to provide parking to its patron at no charge. However, utilization of any parking space in the Parking Facilities by a non-Authorized User in excess of two hours ("**Extra Hours**") shall require collection of a parking fee in accordance with the then established parking rates unless validation for such Extra Hours ("**Excess Validation**") has been provided by merchants/tenants of the Development. All Excess Validation shall be charged to Brownstone or CPLP, as applicable, based on whether the merchant/tenant who provided the validation is located on the Brownstone Parcel or on one of the Centerpoint Parcels.

5. Brownstone shall be billed for all Excess Validations provided by merchants/tenants located on the Brownstone Parcel, and CPLP shall be billed for all Excess Validations provided by merchants/tenants on the Centerpoint Parcels. Charges for Excess Validation shall be equal to the then applicable rates which otherwise would have been charged for the Extra Hours had no Excess Validation been provided.

6. All revenue collected by the parking operator from non-special event operation of the Parking Facilities (including revenues payable (regardless of whether collected) for Excess Validations and all revenue from validations paid by merchant/tenants or other third parties outside of the Development) shall be shared between CPLP, the City and Brownstone as provided in Paragraph 8(a) of the Agreement to which this exhibit is attached.

7. Notwithstanding anything to the contrary contained in the foregoing, for so long as one or more movie theatres are operated on any portion of the Centerpoint Parcels, the operator(s) of such theatre(s) shall be provided a mechanism to provide validations for up to four (4) hours of free parking, and no such validation shall be deemed an Excess Validation. In no event, however, may the 4 hours of free validation available to the operator(s) of any movie theater(s) apply to any theater(s) located on the Centerpoint Parcels if the cumulative total number of seats in all such theater(s) exceeds 2300 seats.

EXHIBIT "E"

List of City Parking Obligations

1. Old Town Ventures Parking Agreement dated November 15, 1995, by and between Old Town Ventures, a general partnership, and the City of Tempe.

2. Laird Building Parking Agreement dated May 14, 1990, by and between Biltmore Estates Realty and Development, Inc. and the City of Tempe.

3. Agreement between Mountain States Telephone & Telegraph Company and the City of Tempe, dated April 15, 1987.

4. Agreement dated September 18, 1987, by and between First Interstate Bank of Arizona, N.A., and the City of Tempe.

5. Frost Parking Agreement dated October 20, 1994, by and between Michael D. Frost, a married man, and the City of Tempe.

6. Linoff Parking Agreement dated August 22, 1996, by and between Linoff Development, Inc. and the City of Tempe.

EXHIBIT "F"

Parking Formulas, Ratios and Requirements for Brownstone Parcel

1) All parking spaces (including both Brownstone Spaces and New Spaces) located in the Parking Facilities shall be a minimum of 8 feet 6 inches wide, 18 feet long and 7 feet high, and all accessible spaces shall meet the requirements of ANSI and all other applicable building, fire, safety and other codes, ordinances, regulations and laws of the City or any other governmental entity or agency having jurisdiction over the Parking Facilities.

2) Upon completion of construction of the Garage, in addition to the required number of Brownstone Spaces described below, the Parking Facilities shall contain a minimum of 340 parking spaces to accommodate 340 Parking Spaces (165 CPLP Spaces and 175 City Spaces, as same may be reallocated from time to time under the Agreement).

3) The total number of Brownstone Spaces required to be constructed in the Parking Facilities shall be determined based upon the size and proposed use classification of the improvements constructed in accordance with the following ratios:

USE	RATIO
Restaurant/Retail (*for lease*)	1 space per 250 rentable square feet provided that any restaurant is no larger than 8,000 rentable square feet. If the restaurant is larger than 8,000 rentable square feet, then the ratio shall instead be 1 space per 125 rentable square feet.
Flex (*fee ownership for sale*)	1 space per 600 useable square feet
Office (*for lease*)	1 space per 312 useable square feet
Residential (*for lease or for sale*)	1 space per 833 sellable square feet
Public Parking	1 space per 3,250 rentable/useable/sellable square feet of the entire development of the Brownstone Parcel[1]

If the result of applying any of the above ratios does not result in a whole number, then

[1] Regardless of whether the total rentable/useable/sellable square feet of improvements constructed on the Brownstone Parcel upon completion of the full development of the Brownstone Parcel is less than 650,000, a minimum of 200 Brownstone Spaces in the Parking Facilities shall be Public Parking Spaces available on a 24 hour/seven day a week basis and conspicuously designated as "visitor" spaces. Upon completion of each phase of construction of development of the Brownstone Parcel, the required number of Brownstone Spaces in the Parking Facilities that are Public Parking Spaces available on a 24 hour/seven day a week basis and conspicuously designated as "visitor" spaces shall be equal to the result determined by applying the ratio described above; accordingly, for example, if the phase of development completed contains a total of 250,000 rentable/useable/sellable square feet, then at least 77 New Spaces that are Public Parking Spaces must be located in the Parking Facilities on the Brownstone Parcel.

for purposes of determining the number of spaces required to be constructed based on that particular ratio, the result shall be rounded to the next highest whole number.

EXHIBIT "G"

Public Parking Requirements for Centerpoint Parcels

Subject to Force Majeure (as defined in Paragraph 18 above), CPLP shall maintain at least three hundred (300) parking spaces throughout the Development that are at all times available to public users free or for an hourly and/or event pay to park fee and are not subject to reserved hourly, daily or other parking permit or other parking rights provided to, or for the benefit of, designated third parties ("**Project Public Spaces**"). Moreover, after 5 p.m. on a daily basis, subject to Force Majeure, CPLP shall cause at least 165 of the Parking Spaces to be maintained as Public Parking Spaces.

If Brownstone constructs and maintains more than 200 Public Parking Spaces in the Parking Facilities which are Public Parking Spaces on a 24 hour/seven day a week basis and are conspicuously designated as "visitor" spaces, then, notwithstanding the foregoing, CPLP shall increase the number of Project Public Spaces that it must maintain after 5 p.m. on a daily basis by an amount equal to the number of Brownstone Spaces in the Parking Facilities in excess of 200 that are Public Parking Spaces on a 24 hour/seven day a week and are conspicuously designated as "visitor" spaces, but in no event shall the foregoing ever obligate CPLP to provide more than 400 Project Public Spaces after 5 p.m. on a daily basis.

EXHIBIT "H"

Formulas, Ratios And/Or Other Requirements For Permits/Stickers/Cards/Codes/Other Access Methods

1) Authorized Users access to the Parking Facilities at no hourly fee shall be monitored/managed through the issuance of one or more of the following access methods. The operator of the Parking Facilities will determine the specific method that will be provided to allow for access i.e., through the issuance of permits, stickers, cards, codes or other similar items (hereinafter referred to as a "**Permit**"):

a) Time of Day – Access to the parking spaces will be controlled both during certain established time periods and during certain days of the week. Accordingly, each Permit issued will be designed to limit the time of day and days of the week that access to the parking spaces will be available as follows:

(i) Office Use – Access with a Permit (i.e., without payment of an hourly fee) will not be permitted before 5:00am Monday through Friday and after 5:00pm Monday through Friday, and before 5:00am Saturday and after 12:00pm on Saturday. No access with a Permit (i.e., without payment of an hourly fee) will be permitted on Sunday.

(ii) Retail Use – Access with a Permit (i.e., without payment of an hourly fee) will not be permitted before 5:00am and after 7:00pm Monday through Sunday.

b) Maximum Hours Per Week – Use of each parking space by an Authorized User will be restricted for a maximum number of hours per week (for example, an employee working a 40-hour per week shift will be provided with the ability to park in the Parking Facilities for a maximum of 40 hours per week plus additional time per day to allow for timely arrival prior to a work shift, non-compensated breaks at lunch or otherwise, and retrieval of the vehicle following a work shift). Accordingly, each Permit issued will be designed to limit the total number of hours per week that access and use of the parking spaces will be made available at no charge to the holder of the Permit. If the holder of the Permit exceeds the maximum allotment of time for the week, the Permit will be designed to prohibit additional access to parking spaces without payment of an hourly fee during the rest of that week and will require payment for time spent parked in a parking space in excess of the allotted maximum. The maximum number of hours per week allotted to each Permit will depend on the number of Permits issued for any one parking space, but the maximum number of hours allotted per week for any one Permit shall be based on the following:

(i) Office Use – restricted to a maximum of 65 hours per week per Permit.

(ii) Retail Use – restricted to a maximum of 60 hours per week per Permit.

The maximum number of hours per week allotted to any one parking space shall be an aggregate total of 140 hours per week; accordingly, the number of Permits available to be issued for each parking space shall be limited accordingly. Multiple Permits issued for the same parking space will be limited based on the foregoing; accordingly, if the maximum number of hours per Permit per week or the maximum number of hours per space per week is ever exceeded, the Permit will be designed to prohibit additional access to parking spaces without payment of an hourly fee during the rest of that week and will require payment for time spent parked in a parking space in excess of the allotted maximum.

c) Limitation on Number of Permits Issued -- Procedures will be established to insure that the total number of Permits issued will never allow use of the Parking Facilities by more Authorized Users at any point in time greater than the applicable cumulative total number of CPLP Spaces, City Spaces and Brownstone Spaces that are not Public Parking Spaces, and procedures will be established to insure that the total number of Permits issued to a single Authorized User will never allow use of the Parking Facilities by Permits issued to that Authorized User at any point in time greater than the applicable total number of spaces allocated to that Authorized User. Accordingly, if, for example, 40 spaces are allocated to an Authorized User of CPLP, and 60 Permits are issued to that Authorized User, the Permits will be designed to preclude any more than 40 cars to enter and remain in the Parking Facilities at any point in time and any attempt by the 41st car to enter the Parking Facilities with a Permit will be rejected until one or more of the cars that has entered with a Permit issued to that Authorized User exits. The Permits shall also be designed and issued in a fashion so as to at all time ensure compliance with the time of day, day of the week, maximum number of hours per Permit and maximum number of hours per space requirements described above. To avoid abuse of the utilization of Permits, Permits will be designed to preclude exiting the Parking Facilities without payment of hourly fees unless at the time access to the Parking Facilities was achieved, access was authorized by, and accomplished through use of, a Permit.

d) Modification of Guidelines – At anytime, CPLP and Brownstone may jointly agree to modify or enhance the foregoing guidelines set forth in subparagraphs 1(a) – (c) and such new or modified guidelines shall automatically become applicable to the City Spaces; provided that: (i) at least thirty (30) days prior written notice of any modifications is delivered to the City; (ii) any modifications or new guidelines may not impose more restrictions on the use of or access to the City Spaces without the City's prior written consent; and (iii) all new or modified guidelines must be enforced in a non-discriminatory fashion against all CPLP Spaces, City Spaces and Brownstone Spaces that are not Public Parking Spaces.

2) Access to the Parking Facilities with a Permit shall be provided on a 24-hour per day, 7-day per week basis for 16 City Spaces (the "**Telephone Spaces**") so long as needed to satisfy the City's obligations under the Parking Agreement dated April 15, 1987 between Mountain States Telephone & Telegraph Company and the City of Tempe. No extension of the term of that Parking Agreement shall be recognized unless approved in writing by Brownstone and CPLP. The provisions of Paragraph 1 above shall not be applicable to these Telephone Spaces; however, the total number of Permits issued for the Telephone Spaces will never allow use of the Parking Facilities by more sixteen (16) Authorized Users at any point in time.

3) Access to the Parking Facilities with a Permit shall be provided on a 24-hour per day, 7-day per week basis for 10 City Spaces to be used by personnel of the City Fire Department (the "**Fire Station Spaces**"). Twenty (20) Permits shall be issued for the Fire Station Spaces; 10 of the Permits shall provide access to the Parking Facilities only during the same twelve hour period each day and the other 10 Permits shall each only provide access to the Parking Facilities during the other twelve hour period each day; however, each of the 20 Permits shall allow access during the same one hour period each day so as to provide a one hour overlap access period for 20 vehicles to accommodate a one time daily shift change of personnel of the City Fire Station.

4) Other than Permits issued with respect to the City Spaces described in Paragraphs 2 and 3 above, the City will not be allowed to have Permits issued that allow for any City Space to be accessed and utilized 24-hour per day 7-day per week, and all restrictions described in Paragraph 1 shall be applicable to all other City Spaces.

5) The foregoing provisions shall not be applicable to any Brownstone Spaces that are designated for owners of Flex Space or designated for owners or tenants of Residential Units.

6) Any excess fees charged to an Authorized User for time spent parked in a parking space in excess of the allotted maximum time shall be charged to the party to this Agreement from whom the Authorized User received its Permit. For example, if the Authorized User that parked in a parking space in excess of the allotted maximum time received its Permit from CPLP or on account of a CPLP Space, then CPLP shall be charged the typical parking fee for such excess time, or if the Authorized User that parked in a parking space in excess of the allotted maximum time received its Permit from the City or on account of a City Space, then the City shall be charged the typical parking fee for such excess time. All such excess charges shall be deemed a part of each party's respective Shared Costs and incorporated in the monthly accounting of Shared Costs as contemplated by Paragraph 6(c) of the Agreement.

ATTACHMENT #3

When recorded, return to:

Neil D. Biskind, Esq.
Biskind, Hunt & Taylor, P.L.C.
11201 North Tatum Boulevard, Suite 330
Phoenix, Arizona 85028

CERTIFICATE OF TERMINATION

This Certificate of Termination ("Certificate") is entered into this ___ day of _____, 2001 by and between CITY OF TEMPE, a municipal corporation ("City") and CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership ("Centerpoint").

RECITALS

A. On December 31, 1985 the parties hereto entered into a Redevelopment and Disposition Agreement, as amended ("RDA"), City of Tempe, Arizona Contract No. C85-235, as recorded in the official records of the Recorder of Maricopa County, Arizona as Instrument No. 86-009532.

B. On April 14, 2000 the parties hereto entered into the Centerpoint Finalization and Completion Agreement ("CFCA"), City of Tempe, Arizona Contract No. C99-169, as recorded in the official records of the Recorder of Maricopa County, Arizona as Instrument No. 00-0288374.

C. City and Centerpoint acknowledge that the obligations of the parties under the RDA and the CFCA have been completed.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. In accordance with the terms and conditions of Paragraph 4 of the CFCA: (i) City acknowledges that Centerpoint has completed its obligations under the RDA; (ii) City and Centerpoint acknowledge that the mutual obligations of both parties under the CFCA have been fulfilled; and (iii) City and Centerpoint hereby agree to terminate the RDA and the CFCA by recording this Certificate in the official records of the Recorder of Maricopa County, Arizona.

IN WITNESS WHEREOF, the parties hereto have entered into this Certificate as of the date first set forth above.

CITY OF TEMPE, a municipal corporation

By:_____
Its:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership

By: UHB Plaza Limited Partnership, an Arizona limited partnership, general partner

By: W.B.S.D. Associates, Inc. an Arizona corporation, general partner

By:_____
Michael A. DeBell,
Its: Executive Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by _____, the _____ of CITY OF TEMPE, a municipal corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by Michael A. DeBell, the Executive Vice President of W.B.S.D. Associates, Inc. an Arizona corporation, the general partner of UHB Plaza Limited Partnership, an Arizona limited partnership, the general partner of CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

ATTACHMENT #4

When recorded, return to:

Neil D. Biskind, Esq.
Biskind, Hunt & Taylor, P.L.C.
11201 N. Tatum Blvd., Suite 330
Phoenix, AZ 85028

THIRD AMENDMENT TO DECLARATION OF RESTRICTIONS

This Third Amendment to Declaration of Restrictions (the "**Amendment**") is entered into this ___ day of _____, 2001 by and between CITY OF TEMPE, a municipal corporation ("**City**"), CHASE BANKCARD SERVICES, INC., a Delaware corporation ("**Chase**"), CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership ("**CPLP**"), and CPT DEVELOPMENT PARTNERS LIMITED PARTNERSHIP, an Arizona limited partnership ("**CPT**").

RECITALS

A. On July 11, 1991, City, Chase and Centerpoint Plaza I Limited Partnership ("**CP I**") entered into a Declaration of Restrictions, recorded on July 25, 1991 in the official records of the Recorder of Maricopa County, Arizona as Instrument No. 91-345267, as amended by an Amendment of Restrictions, dated August 16, 1993 and recorded on August 27, 1993 in the official records of the Recorder of Maricopa County, Arizona as Instrument No. 93-575169 and a Second Amendment to Declaration of Restrictions, dated April 30, 1996 and recorded on January 27, 1997 in the official records of the Recorder of Maricopa County, Arizona as Instrument No. 97-0051448 (collectively, the "**Agreement**"). All interest in the property owned by CP I that was subjected to the Agreement is now owned by CPLP and CPT.

B. City, Chase CPLP and CPT desire to amend the Agreement pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Restricted Property. City, Chase CPLP and CPT hereby agree that the real property described on Exhibit "A" attached hereto (the "**Exception Parcel**") is no longer considered to be a part of the "Restricted Property" as defined in the Agreement and, therefore, the Exception Parcel is no longer intended to, nor shall it be, subject to or encumbered by the Agreement.

2. Capitalized Terms. Unless otherwise defined herein, all capitalized terms used in this Amendment shall have the meanings set forth in the Agreement.

3. No Further Amendment. Except as expressly amended hereby, all other provisions of the Agreement as originally written shall remain in full force and effect.

4. Inurement. This Amendment shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto.

5. Counterparts. This Amendment may be executed simultaneously or in original counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first set forth above.

CITY OF TEMPE, a municipal corporation

By:_____

Its:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CHASE BANKCARD SERVICES, INC., a Delaware corporation

By:_____

Its:_____

CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership

By UHB Plaza Limited Partnership, an Arizona limited partnership, general partner

By W.B.S.D. Associates, Inc., an Arizona corporation, general partner

By:_____
Its:_____

CPT DEVELOPMENT PARTNERS LIMITED PARTNERSHIP, an Arizona limited partnership

By: DMB Tempe Development, Inc., an Arizona corporation, its general partner

By:_____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by _____, the _____ of CITY OF TEMPE, a municipal corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by _____, the _____ of CHASE BANKCARD SERVICES, INC., a Delaware corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by Michael A. DeBell, the Executive Vice President of W.B.S.D. Associates, Inc. an Arizona corporation, the general partner of UHB Plaza Limited Partnership, an Arizona limited partnership, the general partner of CENTERPOINT PLAZA I LIMITED PARTNERSHIP, an Arizona limited partnership, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of DMB Tempe Development, Inc., an Arizona corporation, the general partner of CPT DEVELOPMENT PARTNERS LIMITED PARTNERSHIP, an Arizona limited partnership, for and on behalf thereof.

_____

_____

Notary Public

My commission expires:

_____

Exhibit "A"

EXCEPTION PARCEL

A parcel of land being a portion of Lots 7A and 7B of Centerpoint Plaza, as recorded in Book 544, page 27, Maricopa County Records (M.C.R.) and a portion of Lot 6 of Centerpoint, as recorded in Book 369, page 31, M.C.R. lying within Section 16, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northeast corner of Lot 7A of said Centerpoint Plaza;
THENCE along the north line of said Lot 7A, South 89E59'02" West, a distance of 35.00 feet, to the centerline of Maple Avenue (alignment) and the **POINT OF BEGINNING**;
THENCE leaving said north line, along said centerline, South 00E01'16" East, a distance of 387.50 feet;
THENCE leaving said centerline, South 89E58'44" West, a distance of 18.46 feet;
THENCE South 00E01'16" East, a distance of 95.62 feet, to the southerly line of said Lot 7A and the beginning of a non-tangent curve;
THENCE along said southerly line, southerly along said curve, having a radius of 20.00 feet, concave northwesterly, whose radius bears North 89E44'20" West, through a central angle of 44E44'09", a distance of 15.62 feet, to the curve's end;
THENCE continuing along said southerly line and the projection thereof through Lot 6 of said Centerpoint, back onto said southerly line, South 44E59'49" West, a distance of 238.96 feet, to the beginning of a curve;
THENCE southwesterly along said curve, having a radius of 45.00 feet, concave southeasterly through a central angle of 42E19'04", a distance of 33.24 feet, to a point of intersection with a non-tangent line;
THENCE South 80E59'49" West, a distance of 49.62 feet, to the southern most corner of said Lot 7A;
THENCE leaving said southerly line, along the westerly line of said Lot 7A, North 00E00'00" East, a distance of 135.38 feet;
THENCE North 30E33'15" West, a distance of 77.00 feet;
THENCE North 89E59'24" West, a distance of 87.00 feet;
THENCE North 00E00'36" East, a distance of 80.00 feet;
THENCE South 89E59'24" East, a distance of 17.78 feet, to the west line of the east 4.00 feet of Lot 7B of said Centerpoint Plaza;
THENCE leaving said westerly line, along said west line, North 00E00'36" East, a distance of 422.00 feet, to the southerly right-of-way line of 5th Street as shown on said Centerpoint Plaza;

THENCE leaving said west line, along said southerly right-of-way line, South 89E59'24" East, a distance of 363.51 feet, to the **POINT OF BEGINNING**.

(revised 3/2/01)

ATTACHMENT #5

WHEN RECORDED, RETURN TO:

Neil D. Biskind, Esq.
Biskind, Hunt & Taylor, P.L.C.
11201 North Tatum Boulevard, Suite 330
Phoenix, Arizona 85028

RATIFICATION AND CORRECTION OF FINAL PLAT FOR CENTERPOINT PLAZA

THIS RATIFICATION AND CORRECTION OF FINAL PLAT FOR CENTERPOINT PLAZA (this "**Ratification**") is made and entered into this ____ day of _____, 2001, by and among CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership ("**CPLP**"), the CITY OF TEMPE, ARIZONA, an Arizona municipal corporation (the "**City**"), and HPTMI II PROPERTIES TRUST, a Maryland real estate investment trust ("**HPTMI**").

RECITALS

A. That certain Final Plat for Centerpoint Plaza, constituting a Replat of Lot 7 of "Centerpoint", a subdivision recorded in Book 369 of Maps, Page 31, official records of Maricopa County, Arizona, was recorded October 10, 2000, in Book 544 of Maps, Page 27, and Instrument No. 2000-0775750, official records of Maricopa County, Arizona (which Final Plat recorded in Book 544 of Maps, Page 27 and Instrument No. 2000-0775750 is hereinafter referred to as the "**Replat**").

B. Prior to the recordation of the Replat and pursuant to that certain Special Warranty Deed (the "**Courtyard Deed**") dated May 3, 1996 and recorded in Instrument No. 96-0316144, official records of Maricopa County, Arizona, CPLP conveyed to Courtyard Management Corporation, a Delaware corporation ("**Courtyard**"), (i) fee simple title to all of Lot 7B except the eastern four (4) feet thereof as originally depicted on the Replat (hereinafter the "**Lot 7B Fee Parcel**"), and (ii) an irrevocable and exclusive easement over the eastern four (4) feet of Lot 7B as originally depicted on the Replat (hereinafter the "**Four-Foot Easement**") for purposes, among other things, of locating on such Four-Foot Easement landscaping, parking and other similar improvements relating to the hotel project constructed on Lot 7B.

C. Prior to the recordation of the Replat and pursuant to that certain Special Warranty Deed (the "**HPTMI Deed**") dated October 10, 1997 and recorded in Instrument No. 97-0723630, official records of Maricopa County, Arizona, Courtyard conveyed to HPTMI all right, title and interest held by Courtyard in and to the Lot 7B Fee Parcel and the Four-Foot Easement.

D. As recorded, the Replat mistakenly contained a signature block for Courtyard, omitted a signature block for HPTMI, omitted the signature and date of the Surveyor on the Certificate of Survey, incorrectly depicted the location of the western boundary of Lot 7A and the eastern boundary of Lot 7B, omitted the depiction of the Four-Foot Easement, and omitted the acknowledgments of all signatories to the Replat.

E. CPLP, the City and HPTMI, collectively constituting all owners of fee simple title to all of the real property covered by the Replat, desire to execute, acknowledge and record this Ratification to evidence their unconditional consent, approval and ratification of the Dedication and all other information set forth on the Replat (as modified by this Ratification), in accordance with the following agreement.

AGREEMENT AND RATIFICATION

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties acknowledge, confirm and agree as follows:

1. In accordance with the Courtyard Deed and the HPTMI Deed, the following modifications shall be made to the information depicted on the Replat:

a. The eastern boundary of Lot 7B shall be deemed to be located four (4) feet west of the location depicted therefor on the Replat;

b. The western boundary of Lot 7A shall be deemed to be located four (4) feet west of the location depicted therefor on the Replat; and

c. The Four-Foot Easement shall be deemed to be located contiguous to and immediately east of the eastern boundary of Lot 7B and the western boundary of Lot 7A (as such boundaries have been relocated pursuant to subsections 1(a) and 1(b) of this Ratification).

2. By their signatures and acknowledgments below, CPLP, the City and HPTMI hereby unconditionally (i) consent, approve, ratify and agree to be bound by the Dedication and all other information set forth and depicted on the Replat (as modified by this Ratification) as if such signatures and acknowledgments were originally included on the Replat at the time of its recordation, and (ii) certify to the best of their actual knowledge that the Replat, as recorded, is true, complete and correct and has not been modified or amended except as expressly modified by this Ratification.

3. By his signature and date in the **Certificate of Survey** set forth below, R. Gregg Dodson (the Surveyor who conducted the survey of the real property that is the subject of the Replat) hereby certifies the truthfulness and accuracy of all information set forth in the Certificate of Survey contained in the Replat (as modified by this Ratification) as if such signature and date were originally included in the Replat at the time of its recordation.

4. By this reference, the Replat is hereby incorporated into this Ratification, and the information set forth in this Ratification (including the signatures and acknowledgments of the parties) shall be deemed to be incorporated into the Replat as if originally set forth thereon.

5. All of the terms, provisions and information contained on the Replat which are not expressly modified or supplemented hereby (or which, in context, must be deemed modified or supplemented hereby) shall remain in full force and effect In the event of any conflict or inconsistency between the Replat and this Ratification, the provisions of this Ratification shall control.

6. This Ratification may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Ratification is executed by the parties effective as of October 10, 2000.

CENTERPOINT PLAZA LIMITED PARTNERSHIP, an Arizona limited partnership, as legal owner of fee simple title to Lots 7A and 7E and the eastern four (4) feet of Lot 7B (as originally shown on the Replat), declares that as platted thereon and thereby published (subject to the modifications set forth in this Ratification), the Replat sets forth the location and gives the dimensions of the lots, tracts and easements constituting same and that each lot and private street shall be known by the number, letter and/or name given to each respectively on said Replat, and hereby dedicates and grants to the public the easements as shown on the Replat (with the exception of the private Four-Foot Easement) for the purposes shown thereon, including without limitation the no-build easements depicted on Lots 7A and 7E and the alley dedication depicted on Lot 7E.

CENTERPOINT PLAZA LIMITED PARTNERSHIP,
an Arizona limited partnership

By: UHB Plaza Limited Partnership,
an Arizona limited partnership
General Partner

By: W.B.S.D. Associates, Inc., an Arizona corporation
General Partner

By: _____
Michael A. DeBell
Executive Vice President

HTPMI II PROPERTIES TRUST, a Maryland real estate investment trust, as legal owner of fee simple title to all of Lot 7B except the eastern four (4) feet of Lot 7B (as originally shown on the Replat), and as the holder of easement rights over the eastern four (4) feet of Lot 7B (as originally shown on the Replat), declares that as platted thereon and thereby published (subject to the modifications set forth in this Ratification), the Replat sets forth the location and gives the dimensions of the lots, tracts and easements constituting same and that each lot and private street shall be known by the number, letter and/or name given to each respectively on said Replat, and hereby dedicates and grants to the public the easements as shown on the Replat (with the exception of the private Four-Foot Easement) for the purposes shown thereon, including without limitation the no-build easement depicted on Lot 7B.

HPTMI II PROPERTIES TRUST,
a Maryland real estate investment trust

By: _____
Its: _____

THE CITY OF TEMPE, a municipal corporation of the State of Arizona, as legal owner of Lots 7C and 7D (as shown on the Replat), declares that as platted thereon and thereby published, the Replat sets forth the location and gives the dimensions of the lots, tracts and easements constituting same and that each lot and private street shall be known by the number, letter and/or name given to each respectively on said Replat, and hereby dedicates and grants to the public the easements as shown on the Replat (with the exception of the private Four-Foot Easement) for the purposes shown thereon, including without limitation the no-build easements depicted on Lots 7C and 7D.

CITY OF TEMPE, a municipal
corporation of the State of Arizona

By: _____
Neil G. Guiliano
Its Mayor

Attested to:

_____
City Clerk

CERTIFICATE OF SURVEY

I, R. Gregg Dodson hereby certify that I am a Registered Land Surveyor in the State of Arizona, that this Map consisting of one (1) sheet, correctly represents a survey conducted under my supervision during the month of January, 2000; and that said survey monuments are sufficient to enable the survey to be retraced.

_____

Registered Land Surveyor #13056 Date

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by Michael A. DeBell, who acknowledged himself to be Executive Vice President of W.B.S.D. Associates, Inc., an Arizona corporation, General Partner of UHB Plaza Limited Partnership, an Arizona limited partnership, General Partner of Centerpoint Plaza Limited Partnership, an Arizona limited partnership, for and on behalf thereof.

_____

Notary Public

My Commission Expires:

_____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by _____, who acknowledged himself to be _____ of HPTMI II Properties Trust, a Maryland real estate investment trust, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by Neil G. Guiliano, who acknowledged himself to be the Mayor of the City of Tempe, a municipal corporation of the State of Arizona.

_____
Notary Public

My Commission Expires:

_____